रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 5] नई दिल्ली, जनवरी 26—फरवरी 1, 2014, शनिवार/माघ 6—माघ 12, 1935
No. 5] NEW DELHI, JANUARY 26—FEBRUARY 1, 2014, SATURDAY/MAGHA 6—MAGHA 12, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 15 जनवरी, 2014

का॰आ॰ 311.—बैंककारी विनियमन अधिनियम, 1949 की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा विनिर्दिष्ट करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 15 की उप-धारा (1) के उपबंध सार्वजनिक क्षेत्र के बैंकों और निम्नलिखित निजी क्षेत्र के बैंकों यथा कैथोलिक सिरियन बैंक लि., धनलक्ष्मी बैंक लि., फेडरल बैंक लि., आईएनजी वैश्य बैंक लि., कर्णाटक बैंक लि., करूर वैश्य बैंक लि., लक्ष्मी विलास बैंक लि., नैनीताल बैंक लि., रत्नाकर बैंक लि. और साउथ इंडियन बैंक लि. पर लागू नहीं होंगे जहां तक उनका संबंध वित्तीय वर्ष 2013-14 के दौरान पेंशन का एक और विकल्प देने और उपादान सीमाओं में वृद्धि के कारण व्यय में होने वाली वृद्धि को अपरिशोधित आगे ले जाने वाले व्यय के रूप में माने जाने से है।

[फा. सं. 10/3/2010-बीओए]
एम. एम. दौला, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 15th January, 2014

S.O. 311.—In exercise of the powers conferred under Section 53 of the Banking Regulation Act, 1949, the Central Government, on the recommendation of the Reserve Bank of India, specifies that the provision of sub-section (1) of the Section 15 of the Banking Regulation Act, 1949 shall not apply to Public Sector Banks and the following private sector banks *viz.* Catholic Syrian Bank Limited, Dhanlaxmi Bank Limited, Federal Bank Limited, ING Vysya Bank Limited, Karnataka Bank Limited, Karur Vysya Bank Limited, Laxmi Vilas Bank Limited, Nainital Bank Limited, Ratnakar Bank Limited and South Indian Bank Limited in so far as the treatment of the expenditure on account of one more option for pension and enhancement in gratuity limits, for the financial year 2013-14 being treated as unamortized carry forward expenditure.

[F. No. 10/3/2010-BOA]
M. M. DAWLA, Under Secy.

(कार्यालय मुख्य आयकर आयुक्त, जयपुर)

जयपुर, 15 जनवरी, 2014

सं॰ 11/2013-14

का॰आ॰ 312.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिये कथित धारा के उद्देश्य से स्वामी केशवानंद शिक्षा समिति, राजपूत कालोनी, लक्ष्मनगढ़, जिला-अलवर को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखंड (23सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: मुआआ/अआआ/(मु॰)/जय/10(23सी)(vi)/2013-14/6772]
अतुलेश जिंदल, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, JAIPUR

Jaipur, the 15th January, 2014

No. 11/2013-14

S.O. 312.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "Swami Keshvanand Shiksha Samiti, Rajput Colony, Laxmangarh, Distt-Alwar" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO(Tech.)/10(23C)(vi)/2013-14/6772]
ATULESH JINDAL, Chief Commissioner of Income Tax

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 22 जनवरी, 2014

का॰आ॰ 313.—केंद्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मिनरलस लैब सर्विस प्रा. लि. दुर्गाचाक कालोनी में स्थित, ब्लाक-सी, प्लाट सं॰-12, पी॰ओ॰ एंड पी एस दुर्गाचाक, जिला पूर्वी मिदनापुर (पश्चिम बंगाल), को भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं॰ का॰आ॰ 3975 तारीख 20 दिसंबर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों (समूह-1) अर्थात् लौह अयस्क, उक्त खनिजों और अयस्कों का हल्दिया में, निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से 3 वर्ष की अवधि के लिए निम्नलिखित शर्तों के अधीन एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात्:—

(i) यह कि मैसर्स मिनरलस लैब सर्विस प्रा॰ लि॰ दुर्गाचाक कालोनी में स्थित, ब्लाक-सी, प्लाट सं॰-12, पी॰ओ॰ एंड पी एस-दुर्गाचाक, जिला पूर्वी मिदनापुर (पश्चिम बंगाल), खनिज और अयस्क, समूह-1 (निरीक्षण) नियम 1965 के नियम 4 के अधीन निरीक्षण का प्रमाणपत्र प्रदान करने के लिए उनके द्वारा अनुसरित की जाने वाली निरीक्षण की पद्धति की परीक्षा करने के लिए निर्यात निरीक्षण परिषद द्वारा इस निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं प्रदान करेगा।

(ii) मैसर्स मिनरलस लैब सर्विस प्रा. लि. दुर्गाचाक कालोनी में स्थित, ब्लाक-सी, प्लाट सं.-12, पी.ओ.एंड पी एस-दुर्गाचाक, जिला पूर्वी मिदनापुर (पश्चिम बंगाल), इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निदेशों से आबद्धकर होगा जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर दिए जाएं।

[सं॰ 4/4/2013-निर्यात निरीक्षण]
ए.के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 22nd January, 2014

S.O. 313.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Minerals Lab services Pvt. Ltd., located at Durgachak Colony, Block-C, Plot No.-12, PO & PS-Durgachak, Dist: Purba Medinpur (West Bengal), as an agency for a period of three years from the date of publication of this notification in the Official Gazette, for the inspection of Minerals and Ores (Group-I), namely, Iron Ore, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* S.O. number 3975 dated the 20th December 1965, prior to export of said minerals and ores at Haldia, subject to the following conditions, namely:—

(i) that M/s. Minerals Lab services Pvt. Ltd., located at Durgachak Colony, Block-C, Plot No.-12, PO & PS-Durgachak, Dist: Purba Medinpur (West Bengal) shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine

the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965; and

(ii) M/s. Minerals Lab services Pvt. Ltd., located at Durgachak Colony, Block-C, Plot No. 12, PO & PS-Durgachak, Dist: Purba Medinpur (West Bengal) in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control) may give in writing, from time to time.

[No. 4/4/2013-Export Inspection]
A.K. TRIPATHY, Jt. Secy.

नई दिल्ली, 22 जनवरी, 2014

का॰आ॰ 314.—केंद्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मित्रा एस॰के॰ प्राईवेट लिमिटेड, होल्डिंग सं॰ 22/107 पर स्थित, दुर्गाचक पोस्ट आफिस-खानजनक, हल्दिया, जिला-ईस्ट मिदनापुर-721602, वेस्ट बंगाल (जिसे इसमें इसके पश्चात् उक्त ''अभिकरण'' कहा गया है), को भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं॰ का॰आ॰ 3975 तारीख 20 दिसंबर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों (समूह-1) अर्थात् लौह अयस्क, उक्त खनिजों और अयस्कों का हल्दिया में, निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से 3 वर्ष की अवधि के लिए निम्नलिखित शर्तों के अधीन एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात्:—

(i) यह कि अभिकरण, खनिज और अयस्क, समूह-1 (निरीक्षण) नियम 1965 और खनिज और अयस्क, समूह-II (निरीक्षण) नियम 1965 के नियम 4 के अधीन निरीक्षण करने के लिए उनके द्वारा अनुसरित की जाने वाली निरीक्षण की पद्धति की परीक्षा करने के लिए निर्यात निरीक्षण परिषद द्वारा इस निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं प्रदान करेगा।

(ii) यह कि अभिकरण, इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निर्देशों से आबद्धकर होगा जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद इन नियमों के तहत लिखित रूप में दिये जाए।

[फा॰सं॰ 4/9/13-निर्यात निरीक्षण]
ए॰के॰ त्रिपाठी, संयुक्त सचिव

New Delhi, the 22nd January, 2014

S.O. 314.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Mitra S.K. Private Limited located at Holding No. 22/107, Durgachak P.O., Khanjanchak, Haldia, Dist: Mindapore (East), Pin: 721 602, (herein after referred to as ' the agency') West Bengal as an agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores Group-I, namely, Iron Ore, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce number S.O. 3975 dated the 20th December 1965, prior to export of said minerals and ores at Haldia, subject to the following conditions, namely:—

(i) that the agency, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspections under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and the Export of Minerals and Ores, Group-II (Inspection) Rules, 1965; and

(ii) that the agency, in the performance of their function under this notification shall be bound by such directions as may be issued by the Director (Inspection and Quality Control) Export Inspection Council may give in writing, under these rule.

[F.No. 4/9/2013-Export Inspection]
A.K. TRIPATHY, Jt. Secy.

नई दिल्ली, 22 जनवरी, 2014

का॰आ॰ 315.—केंद्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स सुपरिटेंडेंस कम्पनी इंडिया प्रा॰ लि॰, डी/25-9-17 में स्थित, राजावरी मार्ग, प्रथम तल, श्री शिवा ज्वैलर्स, मुख्य सड़क, कुरुपम मार्किट के निकट, विशाखापत्तनम-530001 जिसे इसमें इसके पश्चात् उक्त अभिकरण कहा गया है, को भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना का॰आ॰ संख्या 3975 तारीख 20 दिसंबर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों (समूह-1) अर्थात् लौह अयस्क, और मैंगनीज अयस्क का, मैंगनीज डाइऑक्साइड को अपवर्जित करते हुए उक्त खनिज और अयस्क का विजाग में, निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से 3 वर्ष की अवधि के लिए निम्नलिखित शर्तों के अधीन एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात्:—

(i) यह कि अभिकरण, खनिज और अयस्क, समूह-1 (निरीक्षण) नियम 1965 और खनिज और अयस्क समूह-II (निरीक्षण) नियम 1965 के नियम 4 के अधीन निरीक्षण करने के लिए उनके द्वारा अनुसरित की जाने वाली निरीक्षण की पद्धति की परीक्षा करने के लिए निर्यात निरीक्षण परिषद द्वारा इस निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं प्रदान करेगा।

(ii) यह कि अभिकरण, इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निर्देशों से आबद्धकर होगा जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद इन नियमों के तहत लिखित रूप में दिये जाए।

[फा॰सं॰ 4/10/13-निर्यात निरीक्षण]
ए॰के॰ त्रिपाठी, संयुक्त सचिव

New Delhi, the 22nd January, 2014

S.O. 315.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Superintendence Co. India Pvt. Ltd. Located at D/25-9-17, Rajavari street, 1st Floor, Sri Siva Jewellers, Main Road, Near Kurupam Market, Vishakhapatnam-530001 herein after referred to as the agency as an agency for a period of three years from the date of publication of this notification, for inspection of Minerals and Ores (Group I), namely, Iron Ore and manganese ore excluding manganese dioxide, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* S.O. number 3975 dated the 20th December 1965, prior to export of the said Minerals and ores at Vizag, subject to the following conditions, namely:—

(i) that the agency, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965; and the Export of Minerals and Ores, Group-II (Inspection) Rules 1965 and;

(ii) that the agency, in the performance of their function under this notification shall be bound by such directions as may be issued by the Director (Inspection and Quality Control) Export Inspection Council may give in writing, from time to time.

[F.No. 4/10/2013-Export Inspection]
A.K. TRIPATHY, Jt. Secy.

जन जातीय कार्य मंत्रालय

नई दिल्ली, 16 जनवरी, 2014

का॰आ॰ 316.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, जनजातीय कार्य मंत्रालयों, निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80 प्रतिशत से अधिक हो जाने के फलस्वरूप एतद्द्वार अधिसूचित करती है:—

1. राष्ट्रीय अनुसूचित जनजाति आयोग, मुख्यालय, नई दिल्ली
2. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, भोपाल
3. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, भुवनेश्वर
4. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, रांची
5. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, रायपुर
6. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, शिलांग
7. राष्ट्रीय अनुसूचित जनजाति आयोग, क्षेत्रीय, कार्यालय, जयपुर

[फा॰ सं॰ ई.11016/1/2013-राजभाषा]
अशोक, संयुक्त सचिव

MINISTRY OF TRIBAL AFFAIRS

New Delhi, the 16th January, 2014

S.O. 316.—In pursuance of Sub-rule (4) of Rule (10) of Official Language (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the National Commission for Scheduled Tribes, where more than 80% of Employees have attained working knowledge of Hindi:—

1. National Commission for Scheduled Tribes, Headquarter, New Delhi
2. National Commission for Scheduled Tribes, Regional Office, Bhopal
3. National Commission for Scheduled Tribes, Regional Office, Bhuvaneshwar
4. National Commission for Scheduled Tribes, Regional Office, Ranchi
5. National Commission for Scheduled Tribes, Regional Office, Raipur
6. National Commission for Scheduled Tribes, Regional Office, Shilong
7. National Commission for Scheduled Tribes, Regional Office, Jaipur

[F. No. E - 11016/1/2013-OL]
ASHOK, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 22 जनवरी, 2014

का॰आ॰ 317.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1057 (1957 की धारा 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 2384, तारीख 18 जुलाई, 2012 द्वारा भारत के राजपत्र, भाग II, खण्ड 3, उपखण्ड (II), तारीख 21 जुलाई, 2012 में प्रकाशित उक्त अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र में 182.83 हेक्टर (लगभग) या 451.77 एकड़ (लगभग) माप वाली में या उस पर के अधिकारों के अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और महाराष्ट्र सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है, कि इससे संलग्न अनुसूची में यथा वर्णित 182.83 हेक्टर (लगभग) या 451.77 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाने चाहिए;

अत:, अब, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है, कि अनुसूची में वर्णित 182.83 हेक्टर (लगभग) या 451.77 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक संख्या सी. 1 (ई)III/जेजेजेआर/895.0713, तारीख 16 जुलाई, 2013 का निरीक्षण कलक्टर, चंद्रपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट कोलकाता, (पिन–700 001) के कार्यालय में या महाप्रबंधक वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर, 440 001 (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची

चिंचोली ओपनकास्ट (रीकास्ट) परियोजना

बल्लारपुर क्षेत्र

जिला–चंद्रपुर (महाराष्ट्र)

(रेखांक संख्या सी.1 (ई)III/जेजेजेआर/895.0713, तारीख 16 जुलाई, 2013)

सभी अधिकार:

क्रम सं॰	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में				टिप्पणी
					निजी	सरकारी वन		कुल	
1	सुबई	3	राजूरा	चंद्रपुर	165.62	17.21	0.00	182.83	भाग

कुल: 182.83 हेक्टर (लगभग)
या 451.77 एकड़ (लगभग)

ग्राम सुबई में अर्जित किए गए प्लॉट संख्यांक:

13, 14/1.14/2.14/3, 16, 17/1ए–17/2बी, 18, 19, 20/1–20/2–20/3–20/4– 20/5, 21/1बी. 21/2बी, 22/1–22/2–22/3–22/4–23, 24/1–24/2, 25/1–25/2– 25/3, 26/1–26/2, 29/1ए. 29/1बी–29/पैकी. 29/2पैकी–29/4–29/1सी/1–29/1सी/2–29/1सी/3–29/1सी/4–29/1सी/5–29/1सी/5–29/1सी/6–29/1सी/7, 30/1ए–30/1बी–30/1सी–30/1डी–30/1ई–30/2,– 30/2बी, 31/1–31/2–32/1–32/2–32/1ए, 32/2ए, 33, 35, 36/1ए, 36/1 बी, 36/2, 37/1, 37/2, 37/3, 37/4, 38/1, 38/2, 38/3, 38/4, 38/5, 39/1, 39/2, 40, 41, 42, 43, 44/1ए–44/2बी, 45/1–45/2–46, 47/1–47/2–47/3, 64/1–64/2– 64/3, 65 भाग, 166/1–166/2, 167/1–167/2–167/3, 168, 170, 171, 172/1–172/2, 182/1–182/2, 183.

सरकारी भूमि:

70पी, 71, 164, 169, नाला, सड़क,

सीमा वर्णन:

क . ख: रेखा ग्राम सुबई में बिन्दु 'क' से आरंभ होती है और सुबई नाले के साथ-साथ गुजरती है, तत्पश्चात् प्लॉट संख्यांक 183, 168, 167/1–167/2–167/3, 166/1–166/2, 164 (सरकारी) की बाह्य सीमा के साथ होकर गुजरती है और बिन्दु 'ख' पर मिलती है।

ख . ग: रेखा ग्राम सुबई से होकर प्लॉट संख्यांक 164, (सरकारी) 166/1–166/2, 167/1–167/2–167/3, 168, 169 (सरकारी) 170, 171, 172/1–172/2– की बाह्य सीमा के साथ होकर गुजरती है और बिन्दु 'ग' पर मिलती है।

ग . घ: रेखा ग्राम सुबई से होकर प्लॉट संख्यांक 172/1-172/2, की बाह्य सीमा के साथ-साथ होकर गुजरती है, तत्पश्चात् नाला पार करती है तत्पश्चात् प्लॉट संख्यांक 25/1-25/2-25/3, 26/1-26/2, 29/1सी/1-29/1सी/2-29/1सी/3-29/1सी/4-29/1सी/5-29/1सी/5-29/1सी/6-29/1सी/7, 29/1,-29/1बी-29/पैकी-29/2पैकी- 29/4, की बाह्य सीमा के साथ होकर गुजरती है, तत्पश्चात् सड़क के साथ होकर गुजरती है और बिन्दु 'घ' पर मिलती है।

घ -ङ : रेखा ग्राम सुबई से होकर प्लॉट संख्यांक 29/1 सी/1-29/1सी/2-29/1सी/3-29/1सी/4-29/1सी/5-29/1सी/6-29/1सी/7, 29/1ए. 29/1बी-29/पैकी-29/2पैकी- 29/4, 32/1, 32/2, 32/1ए-32/2ए, 33 की बाह्य सीमा के साथ गुजरती है और बिन्दु 'ङ' पर मिलती है।

ङ -क: रेखा ग्राम सुबई से होकर प्लॉट संख्यांक 33, 71 (सरकारी), 70पी (सरकारी), 36/1ए,- 36/1बी-36/2- 38/1- 38/2- 38/3- 38/4- 38/5, 65 भाग, 39/1- 39/2, 64/1- 64/2, 64/3, 47/1- 47/2, 47/3- 44/1ए, 44/2बी, की बाह्य सीमा के साथ होकर गुजरती है , तत्पश्चात् सड़क पार करती है और प्लॉट संख्यांक 16, 14/1- 14/2- 14/3, 13, की बाह्य सीमा के साथ होकर गुजरती है, तत्पश्चात् सुबई नाला पार करती है और आरंभिक बिन्दु 'क' पर मिलती है।

[फा॰ सं॰ 43015/14/2010-पीआर आई डब्ल्यू-I]

एम॰के॰ शर्मा, निदेशक

MINISTRY OF COAL

New Delhi, the 22nd January, 2014

S.O. 317.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 2384, dated the 18th July, 2012, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 21st July, 2012, the Central Government gave notice of its intention to acquire all rights in or over the land measuring 182.83 hectares (approximately) or 451.77 acres (approximately) in the locality as spectified in the Schedule annexed to that notification;

And whereas the competent authority in pursuance of section 8 of the said Act, has made his report to the Central Government;

And whereas, the Central Government after considering the report aforesaid and after consulting the Government of Maharashtra, is satisfied that all rights in or over the land measuring 182.83 hectares (approximately) or 451.77 acres (approximately) as described in the Schedule appended hereto are hereby acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that all rights in or over the land measuring 182.83 hectares (approximately) or 451.77 acres (approximately) as described in the Schedule appended hereto are hereby acquired.

The plan bearing number C-1(E)III/JJJR/895-0713, dated the 16th July, 2013 of the area covered by this notification, may be inspected at the office of the Collector, Chandrapur (Maharashtra) or at the office of the Coal Controller, 1, Council House Street, Kolkata (Pin-700 001) or at the office of the General Manager, Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra).

SCHEDULE

CHINCHOLI OPENCAST (RECAST) PROJECT

BALLARPUR AREA

DISTRICT - CHANDRAPUR (MAHARASTRA)

(Plan bearing number C-1 (E)III/JJJR/895-0713, dated the 16th July, 2013)

All Rights:

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares				Remarks
					Tenancy	Govern-ment	Forest	Total	
1.	Subai	3	Rajura	Chandrapur	165.62	17.21	0.00	182.83	Part

Total: 182.83 hectares (approximately)
or 451.77 acres (approximately)

Plot number acquired in village Subai:

13, 14/1-14/2-14/3, 16, 17/1A- 17/2B, 18, 19, 20/1- 20/2- 20/3-20/4- 20/5, 21/1B, 21/2B, 22/1- 22/2- 22/3- 22/4, 23, 24/1- 24/2, 25/1- 25/2- 25/3, 26/1- 26/2, 29/1A- 29/1B,- 29/Paiky- 29/2Paiky-29/4- 29/1C/1-29/1C/2- 29/1C/3- 29/1C/4-29/1C/5- 29/1C/5-29/1C/6- 29/1C/7, 30/1A- 30/1B,- 30/1C-30/1D- 30/1E- 30/2A-30/2B, 31/1- 31/2- 32/1- 32/2- 32/1A 32/2A, 33, 35, 36/1A- 32/1B,-36/2- 37/1- 37/2- 37/3- 37/4- 38/1-38/2- 38/3- 38/4-38/5, 39/1-39/2, 40, 41, 42, 43, 44/1A- 44/2B, 45/1- 45/2- 46, 47/1- 47/2-47/3, 64/1- 64/2- 64/3, 65 Part 166/1- 166/2, 167/1- 167/2- 167/2-167/3, 168, 170, 171, 172/1-172/2, 182/1- 182/2, 183.

Government land:

70P, 71 164, 169, Nallah, Road.

Boundary description:

A-B : Line start from Point 'A' in village 'Subai' and passes along the Subai Nallah, then passes along the outer boundary of plot numbers 183, 168, 167/1- 167/2- 167/3, 166/1- 166/2, 164 (Government) and meets at Pont 'B'.

B-C : Line passes through village 'Subai' along the outer boundary of plot numbers 164 (Government), 166/1- 166/2, 167/1- 167/2- 167/3, 168, 169 (Government) 170, 171, 172/1- 172/2 and meets at Point 'C'

C-D : Line passes through villages 'Subai' along the outer boundary of plot numbers 172/1-172/2, then crosses Subai Nallah and passes outer boundary of plot numbers 25/1- 25/2-25/3, 26/1- 26/2, 29/1C/1- 29/1C/2-29/1C/3- 29/1C/4-29/1C/5- 29/1C/6- 29/1C/7, 29/1A- 29/1B,- 29/Paiky- 29/2Paiky- 29/4- and meets at Point 'D'

D-E : Line passes through villages 'Subai' along the outer boundary of plot numbers 29/1C/1- 29/1C/2- 29/1C/3- 29/1C/4- 29/1C/5- 29/1C/6- 29/1C/7- 29/1A- 29/1B- 29/Paiky- 29/2 Paiky-29/4, 32/1- 32/2- 32/1A- 32/2A, 33 and meets at Point 'E'

E-A : Line passes through village 'Subai' along the outer boundary of plot number 33, 71 (Government), 70P (Government), 36/1A- 36/1B, 36/2, 38/1 38/2 38/3- 38/4, 38/5, 65 Part, 39/1- 39/2, 64/1- 64/2- 64/3, 47/1- 47/2-47/3, 44/1A-44/2B, then crosses road and passes along the outer boundary of plot numbers 16, 14/1- 14/2 14/3, 13, then crosses Subai Nallah and meets at starting Point 'A'.

[F. No. 43015/14/2010-PRIW-I]

M.K. SHARMA, Director

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 11 नवम्बर, 2013

का॰आ॰ 318.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:—

अनुसूची

स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)
आई एस 1652:2013 प्लान्टे धनात्मक प्लेटों सहित सीसा-अम्ल प्रकार की बैटरियां और स्थायी सैल-विशिष्टि (*चौथा पुनरीक्षण*)	—	11 नवम्बर, 2013

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली - 110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 11/टी-21]

आर॰सी॰ मैथयू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 11th November, 2013

S.O. 318.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which is given in the Schedule hereto annexed has been established on the indicated against each:

SCHEDULE

No. & Year of the Indian Standards	No.& Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)
IS 1652:2013 Stationary Cells and Battries, Lead-Acid Type with Plante Positive Plates - Specification [*Fourth Revision*]	—	11 November, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur-Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 11/T-21]
R.C. MATHEW, Scientist 'F'& Head (Electro technical)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 9 जनवरी, 2014

का॰आ॰ 319.—केन्द्रीय सरकार , राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रमों के निम्नलिखित कार्यालयों को, जिनके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि॰

(i) भटिंडा एलपीजी, भराई संयंत्र, गांव फुल्लोखरी, तहसील तलवंडी साबों, जिला – भटिंडा

(ii) बड़ौदा रिटेल क्षेत्रीय कार्यालय, अंबालाल पार्क, वॉटर टैंक रोड, कारेलीबाग, बड़ौदा – 390018

2. भारत पेट्रोलियम कार्पोरेशन लि॰

(i) भारत पेट्रोलियम कार्पोरेशन लिमिटेड, गोवा विमानन, प्लाट ए–4, मोरमूगाव स्टेट, चिकालिम, गोवा – 403711

(ii) संस्थापन प्रबंधक – रायपुर एएफ़एस, भारत पेट्रोलियम कार्पोरेशन लि॰ एविएशन फ्युलिंग स्टेशन, स्वामी विवेकानंद, हवाई अड्डा, रायपुर – 492015

(iii) बोरखेडी डिपो (मध्य रेलवे), तालुका, जिला नागपुर – 441108

(iv) मांगलिया संस्थापन, भारत पेट्रोलियम कार्पोरेशन लि॰ मांगलिया – सनवेर रोड, इंदौर – 453771

(v) रिटेल एरिया मार्केटिंग, स्टेट को–ऑर्डिनेटर (म॰प्र॰/छ॰ग॰) भारत पेट्रोलियम कार्पोरेशन लि॰, ब्लाक 'ए' ऑफिस कॉम्पलेक्स, प्रथम तल, गौतम नगर, भोपाल – 462023

(vi) संस्थापन प्रबंधक – पूणे ए॰एफ॰एस॰, भारत पेट्रोलियम कार्पोरेशन लि॰ एविएशन फ्युलिंग स्टेशन, पुणे एयरपोर्ट, लोहगांव, पुणे–411032

3. आयल एण्ड नेचुरल गैस कार्पोरेशन लिमिटेड

(i) अहमदाबाद परिसम्पत्ति, ऑयल एण्ड नेचुरल गैस कार्पोरेशन लि॰,अवनि भवन, चांदखेडा, अहमदाबाद – 380005

[संख्या 11011/1/2012 (हिन्दी)]
डी॰एस॰ रावत, संयुक्त निदेशक (रा॰भा॰)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 9th January, 2014

S.O. 319.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi:—

1. Hindustan Petroleum Corporation Limited

(i) Bhatinda LPG. Bharai plant, Village Phullokhari, Tahsil, Talwandi Sabo, District - Bhatinda.

(ii) Baroda Retail Regional Office, Ambala Park, Water Tank Road, Karelibag, Baroda - 390018

2. Bharat Petroleum Corporation Limited

(i) Bharat Petroleum Corporation Limited Goa Vimanan, Plot A-4, Mormugaum State, Chikalim, Goa - 403711

(ii) Installation Manager - Raipur AFS, Bharat Petroleum Corporation Limited Aviation Fulling Station, Swami Vivekanand, Airport, Raipur -492015

(iii) Borkhedi Depot (Central Railway) Tawka, District Nagpur - 441108

(iv) Mangliya Installation, Bharat Petroleum Corporation Limited, Mangliya - Sanver Road, Intaur - 453771

(v) Retial Area Marketing, Stat Co-Ordination (M.P./ Chh.G.) Bharat Petroleum Corporation Limited, Block 'A' Office Complex, First floor, Gautam Nagar, Bhopal - 462023

(vi) Installation Manager - Pune AFS, Bharat Petroleum Corporation Limited Aviation Fulling Station, Pune Airport, Lohgaun, Pune-411032

3. Oil and Natural Gas Corporation Limited

(i) Ahmadabad Assets, Oil and Natural Gas Corporation Limited, Avani Bhawan, Chandkeda, Ahmadabad - 380005

[No. 11011/1/2012(Hindi)]

D.S. RAWAT, Jt. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 3 जनवरी, 2014

का॰आ॰ 320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजिंग डायरेक्टर बी एस एन एल देल्ही, प्रिंसिपल जनरल मैनेजर, टेलिकॉम, बी एस एन एल, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/08/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-40012/14/2009-आई आर (डी यू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 3rd January, 2014

S.O. 320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/ NGP/08/2010) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Managing Director, BSNL, New Delhi and Principal General Manager, Telecom, Nagpur and their workman, which was received by the Central Government on 31/12/13.

[No. L-40012/14/2009-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/08/2010 Date: 06.12.2013

Party No. 1(a) : The Managing Director, BSNL, Sanchar Bhawan, Ashoka Road, New Delhi-110001.

(b) : The Principal General Manager, Telecom, Nagpur Telecom Distt., Zero Miles, Civil Lines, Nagpur - 440001.

Versus

Party No. 2 : Smt. Sunita W/o Mahadeo Athawale, R/o C/o Shri Vijay Misar, Vandana General Stroes, Somalwada, Nagpur.

AWARD

(Dated: 6 th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act " in short), the Central Govenment has referred the industrial dispute between the employers, in relation to the mangement of BSNL and their workman, Smt. Sunita Mahadeo Athawale for adjudication, as per letter No.L-40012/14/2009-IR (DU) dated 27.08.2010, with the following schedule:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, in not re-employing their workman Smt. Mahadeo Athawale as per the provisions of Section 25-H of the Industrial Disputes Act, 1947 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, parties were notice to file their respective statement of claim and written statement, in response to which, Smt. Sunita Mahadeo Athawale ("the workman" in short) field the statement of claim and the management of BSNL ("Party no. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that she is a workman and she was in the employment of the Party No. 1 in the capacity of part time worker continuously from 01.07.0994 till 08.04.1999, when her services were illegally terminated and though her work was of regular nature, she was not given appointment order and she was required to work from 9.00 a.m. to 2.00 p.m. daily for sweeping office, filling drinking water for office staff and doing other works as and when assigned to her by her superiors and many a time, she was also required to work in the morning hours from 6.00 a.m. to 8.00 a.m. for collection of tap water, as tap water was available during the said hours only and she worked for about 5 years with clean and excellent service record and not a single charge sheet or memo was issued to her during her entire service tenure and she was paid Rs. 300/- per month as her wages for the first five to six months, where after, her wages was reduced to Rs. 100/- per month, even though, she was required to work for the same duration and the work performed by her was of regular nature and the same is still available, the Party No. 1 neither filled up the vacancy nor made her permanent and Party No. 1 terminated her sevices *w.e.f.* 09.04.1999, without following the due procedure of law, specifically the provisions of Sections 25-G of the Act and her terminationis arbitrary and illegal.

It is further pleaded by the workman that Party No. 1 is an industry within the meaning of the Act and the provisions of Industrial Employment (Standing Orders) Act, 1946 are applicable to Party No. 1 and under the Model Standing Order, the Party No. 1 I is under the obligation to maintain a list of terminated employees and the provide them employment, whenever vacancy arises and such statutory obligations were not followed by Party No. 1 and provisions of Section 25-H of the Act and Rule 79 of the Rules are applicable to Party No. 1 and therefore it was and is obligatory upon Party No. 1 to give 11.09.2007, appointed 12 persons in group 'D' post, in the pay scale of Rs. 4000. 120 5800, the post on which she was earlier working and not considering her case, while engaging other persons, amounts to unfair labour practice and her claim is for her re-employment as per the provisions of Section 25-H of the Act.

Prayer has been made by the workman for her appointment as per Section 25-H of the Act with retrospective effect *i.e.* from 01.09.2007, the date on which 12 new persons were appointed.

3. The Party No. 1 in the written statement, denying all the adverse allegations made in the statement of claim,has pleaded *inter-alia* that the workman was working as part time worker for doing miscellaneous works and she herself stopped coming to work, due to non-availability of work and the work she was doing was not of a regular nature and she was called as and when work was available for her and she was never paid monthly wages and daily wages were paid to her, as and when she was required to work and the provisions of Industrial Employment (Standing Orders) Act, 1946 are not applicable to the case of the workman, as she was not working as a regular employee and it has to provide employment only when the employee is a regular employee and terminated and provisions of Sections 25-F and 25-G of the Act are not applicable to the workman, as she was not a permanent employee and the persons appointed on 11.09.2007 were appointed on compassionate ground, as they were children of regular employees and the provisons of Sections 25-H of the Act are not applicable to the workman and the workman is not entitled to any relief.

4. It is necessary to mention here that *vide* letter No. 40012/14/2009-IR(DU) dated 27.08.2010, Government of India had referred the industrial dispute to this Tribunal, for adjudication, with the schedule as to whether the action of the management of Bharat Sanchar Nigam Limited in terminating the services of the workman, Smt. Sunita Mahadeo Athawale *w.e.f.* 09.04.1999 is legal and justified and if not, as to what relief the workman is entitled and on receipt of the letter of reference, this case was registered by this Tribunal and notices were sent to the parties, fixing the case to 30.03.2011 for filing of their respective statement of claim and written statement. On 30.3.2011, the workan filed a pursis alongwith the copy of the order passed by the Hon'ble High Court, Nagpur Bench in Writ Petition No. 1627/2010 and requested to close the reference, in view of the order passed by the Hon'ble Court in Writ Petition No. 1627/2010. As the Hon'ble High Court by order dated 20.07.2010 had been pleased to quash and set aside the reference made by the Government, with a direction to the Government to make a proper reference in regard to the re-employment of the workman in service under the provision of Section 25-H of the Industrial Disputes Act. In view of the order passed by the Hon'ble Court, the reference was closed, by order dated 30.03.2011.

On receipt of the corrigendum from the Government of India, as per the direction of the Hon'ble court, the case reopened and being noticed, the parties filed their respective statement of claim and written statement.

5. The workman in support of her claim has examined herself as a witness, besides placing reliance on documents

produced by her. The evidence of the workman is on affidavit. In her evidence, the workman has reiterated the facts mentioned in the statement of claim. The evidence of the workman remained unchallenged, as on the date fixed for her cross-examination, none appeared on behalf of the Party No. 1 to cross-examine her. Subsequently also, Party No. 1 did not make any prayer to allow it to cross-examine the workman.

It is also to be mentioned that no evidence was adduced by the Party No. 1 in this case.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was in the employment of the Party No. 1 as a part time worker from 01.07.1994 to 08.04.1999 and her services were illegally terminated *w.e.f.* 09.04.1999, without following the due procedure of law and as per the Standing Order and the provisions of Section 25-H of the Act, it is obligatory upon Party No. 1 to maintain a list of terminated employees and to provide them employment, whenever vacancy arises and Party No. 1 *vide* order dated 11.09.2007 appointed 12 persons in group 'D' post, without considering the case of the workman and such action of Party No. 1 amounts to unfair labour practice and the evidence of the workman has remained unchallenged and as the Party No. 1 has appointed 12 new persons as per order dated 11.09.2007, the workman is entitled for employment, as per the provision of Section 25-H of the Act.

In support of such contentions, the leaned advocate for the workman placed reliance on the decision reported in (1996) 5 SCC - 419 (Central Bank of India *Vs.* S. Satyam and others.)

In the above said decision, the Hon'ble Apex Court have held that:—

> "Labour Law - Industrial Dispute Act, 1947 - Ss. 25-H, 25-F, 25-B, 25-G and 2(oo) - Applicability and Scope - S.25-H, Held applicable to all retrenchment workmen and not only to those covered by S.25-F read with S. 25-B."

Keeping in view the principle enunciated by the Hon'ble Apex Court, the present case in hand is to be considered.

7. In the written notes of argument, it was submitted by the learned advocate for the Party No. 1 that the workman was a part time casual labour *w.e.f.* 01.07.1994 to 08.04.1999 and she stopped coming to the office *w.e.f.* 09.04.1999 and the termination of the workman was challenged by her before the Hon'ble High Court in Writ Petition No. 1001/2002 and the Hon'ble High Court by order dated 07.08.2002 dismissed the Writ application and in view of the order of the Hon'ble High Court, the workman cannot agitate the issue of her termination. It was further submitted by the learned advocate for the Party No. 1 that in Writ Petition No. 6027/2004, which was filed by the workman, the Hon'ble High Court by order dated 27.09.2006, directed that whenever the Party No. 1 would start making employment, the workman would at liberty to raise her claim and the list dated 11.09.2007 annexed by the workman refers to the candidates appointed on compassionated ground and the case of the workman cannot be considered for appointment on compassionate ground and since no appointment has been made by Party No. 1, the claim of the workman cannot be entertained and the workman is not entitled to any relief.

8. Perused the record including the documents filed by the workman. In this case, the issue for consideration is regarding re-employment of the workman, as per the provisions of Section 25-H of the Act. It is not disputed that the Hon'ble High Court in Writ Petition NO. 6027/2004,by order dated 27.09.2006 have been pleased to allow the workman to raise her claim for re-employment, in case Party No. 1 would start making employment. According to the claim of the workman, the Party No. 1 by order dated 11.09.2007 employed 12 new persons, without considering her case and she is entitled for appointment *w.e.f.* 11.09.2007.

The workman has filed the order dated 11.09.2007. On perusal of the said order, it is found that by the said order, the approval of the Chief General Manager, Maharashtra Telecom Circle, BSNL, Mumbai was communicated for creation of 12 posts of group 'D' in Pune SSA and two posts in Nagpur SSA with retention of the posts till 29.02.2008 and creation of the said posts was purely for utilization of CGA approved candidates (compassionate ground applicants). It is clear from the said documents that the Party No. 1 did not employ any junior to the workman having less number of working days or started making employment of new persons. As the orders in question relate to compassionate appointment, the workman was not entitled for consideration for her appointment. Hence, it is ordered:—

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

का॰आ॰ 321.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी प्रिंसिपल जनरल मेनेजर, टेलिकॉम, बी॰एस॰एन॰एल॰, नागपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/40/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-40012/38/2013-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

S.O. 321.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. CGIT/NGP/40/2013) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Principal General Manager, Telecom, BSNL, Nagpur and their workman, which was received by the Central Government on 31/12/13.

[No. L-40012/38/2013-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/40/2013 Date: 12.12.2013

Party No. 1 **(A) :** The Principal General Manager, Telecom, Nagpur Telecom District, Telecom Bhawan, Civil Lines, Nagpur-440001

(B) The Additional General Manager, (CAFA, Central & West), BSNL, CTO Compound, 5th Floor, Civil Lines, Nagpur-440001.

(C) The Chief Suprintendent, Central Telegraph Office, BSNL, CTO Building,Civil Lines, Nagpur: 440001.

Versus

Party No.2 : Smt.Manoramabai Krishnaji Nagrare,

Plot No. 131, Chandan Nagar, Near Fatte Sing Dhabre's House, Nagpur-440009.

AWARD

(Dated: 12th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom, Nagpur Telecom District and their workman, Smt. Manoramabai Krishnaji Nagrare, for adjudication, as per letter No.L-40012/38/2013-IR(DU) dated 18.07.2013, with the following schedule:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Nagpur in refusal of employment to Smt. Manoramabai Krishnaji Nagrare, Part time casual labourer from 17.05.2012 without assigning any reason or without any order, is just, fair and legal? To what relief the applicant is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement,by registered post with acknowledge due.

The notice sent to the workman by RPAD was served personally on the workman and service of notice on her held to be sufficient.

The management of Telecom (BSNL) appeared through their advocates, Shri S.C. Mehadia,Shri A.S. Mehadia and Shri R.A. Jain.

Inspite of adjourning the case thrice for filing of statement of claim by the workman, the workman neither neither appeared nor filed any statement of claim. So, on 12.12.2013, the reference was closed, holding that the workman was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a workman raises a dispute challenging the validity of the termination of his/her service, it is imperative for him/her to file written statement before the Industrial Court setting out grounds on which the order is challenged and he/she must also produced evidence to prove his/her case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and the workman would not be entitled to any relief.

Judging this case with the touch stone of the settled principles as mentioned above, it is found that the workman has neither appeared not filed any statement of claim and as such, she is not entitled to any relief.Hence, it is ordered:—

ORDER

The action of the management of Bharat Sanchar Nigam Limited, Nagpur in refusal of employment to Smt. Manoramabai Krishnaji Nagrare, Part time casual labourer from 17.05.2012 is just, fair and legal. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 जनवरी, 2014

का॰आ॰ 322.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी प्रिंसिपल जनरल मेनेजर, टेलिकॉम, बी एस एन एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/41/2013) को

प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-40012/39/2013-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd January, 2014

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. CGIT/NGP/41/2013) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Principal General Manager, Telecom, BSNL, Nagpur and their workman, which was received by the Central Government on 31/12/2013.

[No. L-40012/39/2013-IR (DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/41/2013 Date: 12.12.2013.

Party No. 1 (A) The Principal General Manager, Telecom, Nagpur Telecom District, Telecom Bhawan, Civil Lines, Nagpur- 440001

(B) The additional General Manager, (CAFA, Central & West), BSNL, CTO Compound, 5th Floor, Civil Lines, Nagpur:—440001.

(C) The Chief Suprintendent, Central Telegraph Office, BSNL, CTO Building, Civil Lines, Nagpur: 440001.

Versus

Party No. 2 : Smt. Kamalabai Madhurkar Jambhulkar R/o Near Miland Budh Vihar, Rambag, Nagpur-440009.

AWARD

(Dated: 12th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom, Nagpur Telecom District and their workman, Smt. Kamalabai Madhurkar Jambhulkar, for adjudication, as per letter No. L-40012/39/2013-IR (DU) dated 18.07.2013, with the following schedule:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Nagpur in refusal of employment to Smt. Kamalabai Madhurkar Jambhulkar, Part time casual labourer from 17.05.2012 without assiging any reason or without any order, is just, fair and legal? To what relief the applicant is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

The notice sent to the wrokman by RPAD was served personally on the workman and service of notice on her held to be sufficient.

The management of Telecom (BSNL) appeard through their advocates, Shri S.C. Mehadia, Shri A.S. Mehadia and Shri R.A. Jain.

Inspite of adjourning the case thrice for filing of statement of claim by the workman, the workman neither appeared nor filed any statement of claim. So, on 12.12.2013, the reference was closed, holding that the workman was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a workman raises a dispute challenging the validity of the termination of his/her service, it is imperative for him/her to file written statement before the Industrial Court setting out grounds on which the order is challenged and he/she must also produced evidence to prove his/her case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and the workman would not be entitled to any relief.

Judging this case with the touch stone of the settled principles as mentioned above, it is found that the workman has neither appeared nor filed any statement of claim and as such, she is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of Bharat Sanchar Nigam Limited, Nagpur in refusal of employment to Smt. Kamalabai Madhurkar Jambhulkar, Part time casual labourer from 17.05.2012 is just, fair and legal. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 6 जनवरी, 2014

का॰आ॰ 323.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर ऑफ रिसर्च, रबर रिसर्च इंस्टिट्यूट ऑफ इंडिया, रबर बोर्ड, कोट्टायम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं

श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-42011/25/2010-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th January, 2014

S.O. 323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C.R. No. 26/2010) of the Central Government Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director of Research, Rubber Research Institute of India, Rubber Board, Kottayam and their workman, which was received by the Central Government on 31/12/2013.

[No. L-42011/25/2010-IR (DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 26th December, 2013

PRESENT: SHRI S.N. NAVALGUND, Presiding Officer

C R No. 26/2010

I Party	II Party
The President, Mill, & General Mazdoor Sangh, BMS Office, Felix Pai Bazaar, MANGALORE - 575001.	The Director of Research, Rubber Research Institute of India Rubber Board. KOTTAYAM - 686009.

APPEARANCES

I Party : Smt. H. Mangalamba Rao, Advocate

II Party : Shri Markos Vellapally, Advocate

AWARD

1. The Central Government vide order No. L-42011/25/2010-IR(DU) dated 12.07.2010 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the Mill & General Mazdoor Sangh (BMS) is justified in its demand for _ (i) extending benefits to all temporary and permanent workers of RRIL, HBSS, Nattanna on par with the lowest scale applicable to the Central Government employees, with retrospective effect from 01/12/2008, (ii) issuing proper appointment orders to all these workers with 'D' status and (iii) extending leave and all other benefits available to these workers without discrimination? If yes, what relief they are entitled to?"

2. On receipt of the reference while registering it in CR 26/2010 when notices were issued to both the sides they entered their appearances through their respective advocates and I party filed claim statement on 08.11.2010 and II Party its written statement on 22.11.2011.

After completion of the pleading having regard to the schedule of the reference when the I Party was called upon to adduce evidence justifying its demands, on 18.12.2013 a Joint Memo of settlement signed by counsel for both sides and President of I Party came to be filed with request to pass an award in terms of the accompanying settlement.

In the Memorandum of Settlement the II Party/ Employer having agreed to enhance the daily wage of the permanent general workers to Rs. 250.00 *w.e.f.* 01.04.2012 which shall remain in vogue for three years period *i.e.* from 01.04.2012 to 31.03.2015 and the I Party Union has assured that during the period of currency of the agreement *i.e.*, upto 31.03.2015 they will not raise demand for regularisation as Group D Employees of Rubber Board and other demands having financial implications over the II Party, the award is passed accordingly in the following terms:

ORDER

The II party in terms of the settlement submitted before this tribunal shall pay the daily wages of the permanent general workers by Rs. 250.00 *w.e.f.* 01.04.2012 and continue to pay at the same rate till 31.03.2015 of the following workers:

Category of Workers		**RB Job Differential**
1. Tapping	10/-	01/12/2008 to 31/03/2010
	12/-	from 01/04/2010 onwards
2. Processing	6.75	01/12/2008 to 31/03/2010
	7.75	From 01/04/2010 onwards
3. Sweeping	5.35	01/12/2008 to 31/03/2010
	6.35	From 01/04/2010 onwards
Watching		
1. Day Watching	5/-	From 01/12/2008 onwards
2. Night Watching	15/-	From 01/12/2008 onwards

RB Service Weightage

	Payment	Casual
From 01/12/2008 to 31/3/2009	20/-	20/-
From 01/12/2009 to 31/3/2010	40/-	20/-
From 01/12/2010 to 31/3/2011	60/-	30/-
From 01/12/2011 to 31/3/2012	80/-	40/-
From 01/12/2012 to 31/3/2015	100/-	60/-

It is further ordered that the I Party Union during the period of currency of agreement *i.e.*, upto 31.03.2015 shall not raise demand for regularisation as Group D of the Rubber Board and other demands having financial implications over II party management and shall render all co-operations in smooth running of its Hevea Breeding Station, Nattana, D.K. District Karnataka.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 324.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलिकॉम, भटिंडा, पंजाब के प्रबंधतंत्र के संबंद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 550/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-40012/105/2001-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 550/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager,Telecom, Bathinda, Punjab and their workman, which was received by the Central Government on 31/12/2013.

[F. No. L-40012/105/2001-IR(UD)]

P. K.VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Shri A.K. RASTOGI, Presiding Officer.

Case No. I.D. No. 550/2005

Registered on 23.8.2005

Smt. Krishna, W/o Sh. Ram Singh, C/o Sh. N.K. Jeet, 27349, Lal Singh Basti Road, Bathinda.

...Petitioner

Versus

The General Manager, Telecom, Bathinda, Punjab.

...Respondent

APPEARANCES:

For the Workman Sh. N.K. Jeet.

For the Management Sh. D.R. Sharma

AWARD

Passed on 12.7.2013

Central Government *vide* Notification No. L-40012/105/2001 [IR(DU)] Dated 26.6.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub-Section (2-A) of Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of General Manager, Telecom, Bathinda in terminating the services of Smt. Krishna W/o Sh. Ram Singh is just and legal? If not to what relief the workman is entitled to and from which date?"

As per claim statement the workman worked as Sweeper in Telecom Exchange Balianwali on a permanent job from 5.4.1993on monthly wages. Her services were terminated on 1.3.1999 without notice, charge-sheet, inquiry and compensation. Juniors to her however were retained at the time of her termination. According to the claim statement her termination is illegal, null and void and against the provisions of the Act.

The claim was contested by the BSNL, Bathinda. It was alleged that the Department of Telecom Services and Department of Telecom Operations have ceased to exist *w.e.f.* 1.10.2000 and they have been converted into public undertaking known as Bharat Sanchar Nigam Limited. There is no relationship of master and servant between the BSNL and the workman. It was further denied that she had been appointed on permanent job. In fact she had applied for part-time sweeper on contract basis and offered to work on contract basis and she had agreed that she will not have any claim or right for permanent absorption in the department. She had not been recruited as per Recruitment Rules. It was also denied that any junior to the workman had been retained at the time of termination.

A replication was filed by the workman to say that the BSNL having inherited all the assets and liabilities of the Department of Telecom and being its successor is fully liable in the present industrial dispute. It has been further alleged that workman had been appointed as a part-time

sweeper as per rules of the department and she continuously worked from 5.4.1993 to 1.4.1999 under the supervision and control of the management. She was being paid by the management. It was denied that the workman had applied for part-time job on contract basis.

In evidence the workman examined herself while on behalf of the management Major Singh SDE Legal was examined. Parties relied on certain documents also. The workman subsequently absented herself and did not appear despite notice sent by registered post to her and the case was ordered to proceed ex-parte against the workman on 3.9.2010 and her evidence was closed. The management witness was examined on 3.11.2011 while the workman was ex-parte.

At the stage of argument none appeared to argue the case on bahalf of management also. I however have perused the evidence on record carefully. There is no evidence to show that the workman had been recruited according to rules. Hence she has no lien on the post. Though the respondent had denied that the workman was the employee of the BSNL and her services were terminated by it. Yet from the written statement the engagement of the workman with the department is evident. The question is whether the services of the workman were terminated in violation of the provisions of the Act. It is important to note that it has not been specifically alleged in the claim statement that the workman completed 1 year's continuous service before her termination. Against it, it is in the affidavit of the management witness that the workman as per record had been engaged in February, 1993 and she continued up to March, 1994 and she never worked for 240 days in a year. The statement of the management witness remains uncontroverted as the workman had been put ex-parte. Thus the workman has failed to prove that she was entitled to the protection of Section 25F of the Act.

In her statement she could not name the person junior to her retained in service after her termination. Hence, the violation of Section 25G is also not proved.

There appears therefore no illegality in the termination of the workman hence, the reference is answered against the workman. She is not entitled to any relief. Hard and Soft copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 325.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेयरमैन, वज्रा स्टेशन कैंटीन, जालंधर, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 26/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-14012/27/2006-आई आर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

S.O. 325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 26/2007) of the Central Government Industrial Tribunal/Labour Court-I, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chairman Vajra Station Canteen, Jalandhar, Punjab and their workman, which was received by the Central Government on 31/12/2013.

[No. L-14012/27/2006-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI S.P. SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. ID 26/2007

Shri Gend Lal C/o Shri H.S. Hundal, Chamber No. 112, District Courts, Sector-17, Chandigarh.

...Workman

Versus

The Chairman, Vajra Station Canteen, Jalandhar Canteen, Janalndhar (Punjab).

...Management

APPEARANCES:

For the workman: Shri Hardayal Singh.

for the management: Shri G.L. Aggarwal.

AWARDS

(Passed on 3.7.2013)

Central Govt. *vide* letter No. L-14012/27/2006-IR(DU) dated 25.4.2007 has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Vajra Station Canteen Jalandhar, in terminating the services of their workman Shri Gend Lal *w.e.f.*15.11.2005 is legal and justified? If not, to what relief the workman is entitled to?"

2. The workman in claim statement pleaded that he was appointed as Counter-Attendant at Vajra Station Canteen Depot Jalandhar Cantt. in 1994 on temporary basis and he was issued regular appointment *w.e.f.* 13.7.1996. Workman was charge-sheeted later on *vide* charge-sheet

dated 21.1.2004. He replied the charges stating therein that 12 bottles of rum was found from Sh. Vijain an employee of the VSC who was working in the Canteen and workman was only working as helper and duties of the halper and salesman are quite different and he was falsely implicated in a case. The worrkman further stated that he has no knowledge for sale of 60 bottles in August 2004 by Smt. Beena Kumari. Beena Kumari named the workman when she requested for reinstatement after his resignation was accepted and on inducement of the management she was given in writing implicating the workman in a false case. During the inquiry Smt. Beena Kumari did not appear and the evidence of Mr. Vijain cannot be taken against the workman as Mr. Vijain himself was involved in the case. The inquiry was not conducted in a fair and proper manner. As the workman was not afforded full opportunity and being Class IV employee he was not aware of the intricacies of the inquiry proceeding. He was not provided with assistance of co-worker during the inquiry proceeding. The termination order passed by the Chairman, Vajra Station Canteen *w.e.f.* 15.11.2005 is wholly illegal, arbitrary and against the service rules. No inquiry report was supplied to the workman and he was not aware of the inquiry report whether charges were proved against him or not. The workman was not provided with the inquiry report even after his termination. It is prayed by the workman that his termination is in violation of Section 25F and Section 25H of the ID Act as he was not given any retrenchment compensation and new appointments have been made by the management after his termination. He has prayed for his reinstatement with continuation of service and full back wages.

3. Management filed written statement. preliminary objection has been taken that respondent-management is not an industry as defined under the ID Act. As the management is neither a trade nor a business nor undertaking nor an establishment similar to or analogous to industry, therefore, this Court has no jurisdiction to adjudicate the present reference. It is further pleaded that Gend Lal petitioner is not a workman as defined under the Act. In view of the judgment passed by the Hon'ble Supreme Court in Union of India and Other *Vs.* M. Aslam and Other in Civil Appeal No. 1039-1940 of 1999 dated 4.1.2001, employees of Canteen are to be treated at par with Government employees. Therefore this dispute cannot be tried by this Tribunal. It is further pleaded that the dismissal of the workman is based on fair and proper inquiry for the serious misconduct. Domestic inquiry was held in accordance to the principal of natural justice and the charges were duly proved. It is further pleaded that management is a Military Canteen and its services are limited only to the person serving the Armed Forces or Ex-Servicemen. As such the respondent management is governed by the law applicable to Defence services and is not governed by the provisions of Industrial Disputes Act. It is further pleaded that management is governed by the SOP which are framed, amended, renewed and replaced from time to time and the termination of the workman is according to the rules applicable to the management. On merits it is pleaded that 12 bottles of rum were arranged and given to workman by Sh. Vijain and the workman was responsible for the same. The responsibility of picking up the bottles was of the workman and workman was rightly implicated. Reinstatement of one Beena Kumari by the management has nothing to do with the charges leveled against the workman. Fair and proper inquiry was conducted against the workman in accordance with the principles of natural justice and he was given full opportunity during the inquiry to defend himself. Order dated 10.11.2005 was legal. The dismissal from service of the workman was after holding the inquiry in which charges were proved and provisions of Section 25F and 25H of the Industrial Disputes Act 1947 are not attracted. Management has prayed for the dismissal of the reference.

4. Replication was also filed by the workman reiterating the claim made in the claim statement.

5. Both the parties in evidence filed affidavits along with documents. Management also along with the affidavit of Col. A.K. Singh also placed on record complete inquiry proceeding. My learned predesessor heard the arguments on fairness of enquiry and *vide* order dated 7.7.2010 held as under—

> "On perusal of the entire material on record, I am of the view that there have been no procedural lapse and enquiry was conducted as per the rules. Accordingly I am of the view that fair and proper enquiry was conducted by the enquiry officer.

There is a difference in conducting enquiry and decision making of the enquiry officer. One of the contentions of the workman is that no speaking order was passed by the enquiry officer. It does not relate to the procedure adopted by the enquiry officer but it relate to the decision making of the enquiry officer. On decision making of the enquiry officer and disciplinary proceedings, the opportunity to both of the parties is afforded for adducing any evidence shall be given. There may be cases where the enquiry might have been conducted in a fair and proper manner but the decision making of the enquiry officer has suffered with some perversity. The enquiry officer might have considered the evidence on record or he has not considering the material evidence not on record. Under such cases, the opportunity for hearing is mandatory. Thus, on perversity of the enquiry officer and on quantum of punishment, I am affording the opportunity to adduce evidence to both of the parties. Both of the parties are directed to appear this tribunal for adducing evidence on 27.9.2010 Let parties be informed."

6. On the issue of perversity of the Inquiry Officer and on quantum of punishment both the parties led evidence. Workman filed his affidavit Exhibit W1 and was

cross-examined. During cross-examination workman stated that he has not received any show casuse notice and he was not provided any opportunity to reply the same. Management produced Lieutenant Colonel A.K. Singh who filed his affidavit Exhibit M1 and also relief on inquiry file consisting of 107 pages and other documents Exhibit M2 to M8. The witness of the management stated that it is incorrect that no personal hearing was given, no show cause notice was given that he was punished without following the procedure. It is also denied by witness that Sh. Vijain was named and implicated the workman to save his skin.

7. My predecessor *vide* Order dated 7.7.2010 has held that inquiry conducted against the workman was in accordance with the principles of natural justice and no infirmity was found and there have been no procedural lapse and inquiry was conducted as per rules and it was held that fair and proper inquiry was conducted by the Inquiry Officer. This Court is only to decide whether there is any perversity of the Inquiry Officer and on quantum of punishment. One more question to be decided by this Court is whether the management is an industry under the ID Act and consequently applicant Gend Lal is a workman under Section 2-S of the ID Act?

8. Both the parties filed written arguments. The workman in written arguments has submitted that he was charge-sheeted and Inquiry Officer was appointed but no show cause notice was given by the management to the workman which was mandatory along with the inquiry report. It is further pleaded in the written arguments that principles of natural justice required furnsihing of the copy of the inquiry report and petitioner was grately prejudiced by non-furnishing of copy of inquiry report which render the inquiry vitiated. The learned counsel for the workman relief upon the judgment of the Andhra Pradesh High Court in Hari Prasad *Vs.* Depot Manager reported in 1996 (5) SLR Page 365 the Full Bench judgment of the Hon'ble Supreme Court reported in 1991 (1) SCT 111 Union of India and Other *Vs*. Mohammed Ramzan Khan. It is prayed in the wirtten arguments that termination order dated 10.11.2005 is wholly illegal and arbitrary and against the Central Service Punishment & Appeal Rules and the workman may be reinstated with continuity of service with full back wages.

9. The management in written arguments submitted that inquiry was conducted in accordance with the principles of natural justice and full opportunity was given to the workman to defend himself during the inquiry. The charges were proved and the disciplinary authority rightly imposed the punishment of termination of service.

10. The first and foremost question to be decided first before proceeding further is whether the respondent management *i.e.* Vajra Station Canteen is an industry under Section 2(j) of the Industrial disputes Act 1947?

11. The management Vajra Station Canteen Jalandhar Cantt. Punjab filed detailed reply stating therein that as the management is neither a trade nor a business nor undertaking nor an establishment similar to or analogous to industry in the definition of industry in the Industrial Disputes Act 1947. It has also been held in award of Labour Court Jalandhar in the case of of Jagdish Singh *Vs.* Vajra Station Canteen that the management of Vajra Station Canteen Jalandhar is not an industry. The undertaking of respondent is neither a trade nor a business, nor an undertaking nor an establishment similar to or analogous to industry, therefore this Court has no jurisdiction to adjudicate the present reference. Respondent management in its written statement also mentioned that it has been held by the Hon'ble Supreme Court in union of India and other *Vs.* M. Aslam and other in Civil Appeal No.1039-1940 of 1999 dated 4.1.2001, employees of Canteen are to be treated at par with Government employees. As such the employees of Central Govt. or State Govt. are not covered under the provisions of Industral jurisdiction. On this ground the respondent management submit that as the respondent management is not an industry and this Tribunal has no jurisdiction to entertain and try the present reference.

12. In para 3 of the authority cited AIR 2001 Supreme Court page 526 Union of India Vs/am and others it is mentioned that in order to decide whether the employees seving in the Unit run Canteens can be held to be government servants, it is necessary to find out the mode of appointment of such employees. Rules and regulations governing the conditions of service of such employees, found from which such salary is paid and other factors which really determine the existence of relationsip of master and servant between the government and the employees. There are two types of canteens(I). canteen store department and (2). unit run canteen.

Section 2(j) of the Indsutrial Disputes Act 1947 defines the 'índustry' as under:

> "(j) industry means any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"

13. It is pertinent to mention here that his provisions has been substituted by amendment in Section 2 in Industrial Disputes (Amendment) Act 1982 (46 of 1982) which is as under:

> "(j)"industry"means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or disrtribution of goods or services with a view to satisfy human wants or wishes (not being wants or

wished which are merely spiritual or religious in nature), whether or not,—

(i) .....

(ii) such activity is carried on with a motive or make any gain or profit and includes-

(a) Any acitivty of the Dock Labour Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) Any activity relating to the promotion of sales or business or both carried on by an establishment,

.....

But does not include.....

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the department of the Central Govt. dealing with defence research, atomic energy and space;

14. Keeping in view of the amended provision of the Industrial Disputes Act 1947 (amendment Act 1982) Vajra Station Canteen is not an industry and hence this Tribunal has no jurisdiction to entertain and adjudicate the present reference.

15. As in the forgoing paras it has been held that this Tribunal has no jurisdiction to try and adjudicate the present reference, therefore, the reference is returned to the Central Govt. without deciding the same on merits. Central Govt. be informed.

S.P. SINGH, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 326.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **आल इंडिया रेडियो, न्यू दिल्ली** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं॰-2 के पंचाट (संदर्भ संख्या 14/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/12/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/206/99आई आर (डी यू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

S.O. 326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. No. 14/2000) of the Central Government Indstrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of All India Radio, New Delhi and their workman, which was received by the Central Government on 26/12/13.

[No. L.42012/206/99-IR(DU)
P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

PRESENT: Shri Harbansh Kumar Saxena

ID No. 14/2000

Sh. Mahipal Singh

Verus

All India Radio

AWARD

The Central Government in the Ministry of Labour *vide* notification No. L-42012/206/99/IR(DU) dated 20.01.2000 referred the following industrial Dispute to this tribunal for the adjudication:—

"Whether Sh. Mahipal Singh S/o Sh. Ghamandhi Lal who worked as casual artist with All India Radio, News Services Division for 72 days in 1996, 150 days in 1997 and 90 days in 1998 is entitled to regularization of his Services/ If yes, to what relief and benefits the workman is entitled and from what date?"

On 22-02-2000 reference was received in this tribunal which was register as I.D. No. 14/2000 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 06.11.2000. Wherein he state as follows:—

1. That the workman has been in the employment of the management for the last many years since 1982-83 at the post of Peon as IVth class worker. The period in which the workman has worked with the said management are given in detail is under.

1.	01.10.1983	to	02.02.1983	
2.	16.08.1986	to	20.02.1986	
3.	01.01.1996	to	31.03.1996	90 days

4.	01.08.1997	to	31.12.1997	150 days
5.	10.05.1998	to	31.08.1998	114 days

2. That the workman has worked during the last calender year since 01.08.1997 to 31.08.1993 for more than 240 days and the workman requested the management for regularization in the service. The management turned annoyed with the said demand to regularization in the service and the management has terminated the services of the workman with effect from 31.08.1998 by way of refusal from duty without giving any notice /notice pay in lieu thereof.

3. That the workman approached the management personally a number of times and requested for duty but the management flately refused to take back the workman on duty and thereafter the workman gave a letter to the management *vide* dated 23.09.1998 personally but the management again refused the workman to take on duty.

4. That the workman thereafter was constrained to file an application before the conciliation officer/Asstt. Commissioner, Labour Court, Central Curzon Road, New Delhi *vide* application dated 26.02.1999. There the management filed its reply *vide* dated 23.06.1999 in which they admitted that the workman has worked with the management but they refused the workman to take back him on duty. At this the conciliation officer sent the matter for appropriate action to the Government of India, Ministry of Labour "BHARAT SARKAR SHRAM MANTRALAYA" New Delhi and the Ministry of Labour has referred the matter to this Hon'ble Court for adjudication. The reference is as under:-

> "Whether Sh. Mahipal Singh S/o Sh. Ghamandhi Lal who worked as casual artist with All India Radio, News Services Division for 72 days in 1996, 150 days in 1997 and 90 days in 1998 is entitled to rgularization of his services? If yes, to what relief and benefits the workman is entitled and from what date?"

5. That the workman submits that he was not given any appointment letter at any point of time and he was directly given duty by the management however his attendance was being marked in the attendance register of the management.

6. That the workman submits that he was paid salary on daily rated basis but he was never engaged on the contract basis as stated by the management before the conciliation officer in reply to the application of the workman.

7. That the workman submits that he was issued various certificates in favour of the workman by the management which prove that the workman was engaged with the management as on daily rated basis.

8. That the workman submits that the date of birth of the workman is 01.07.1969 and he is also handicapped person having disability of Post Polio.

Unjustified, against the principle of natural justice and contrary to the provisions of Industrial Dispute Act 1947 (as amended up date) and also tentamount to unfair labour practice.

It is therefore most respectfully/humbly prayed to this Hon'ble Court that this Hon'ble Tribunal/Court may kindly be pleased to pass as award in favour of the workman and against the management and directing thereby to the management to reinstate the workman in the service as regular workman with full back wages, continuity in the service with all consequential benefits in the interest of justice.

Any other and action may kindly be passed in favour of the workman and against the management and also any other relief to the workman which this Hon'ble Court deem fit and proper in the interest of justice.

Against claim statement management filed following written statement on 5.6.2002:-

1. That the claim of the applicant under this para is misconceived misleading and devoid of factual position. He has been engaged as casual assignee to manually in General New Room/Hindi News Room at the prescribed fee for the categories of casual assignees for the following period:—

Year	No. of days he performed duty
1996	72 days
1997	150 days
1998	90 days

As regards his claim for the period from 01.10.1982 to 02.02.1983, it is respectfully submitted that the certificate No. 1(9)S-82 dated 16.02.1983 has not been issued by any authorized officer. As regards its correctness, it may be stated that this being very old, it has been possible to lay hands on the record to verify it, the period 16.08.1986 to 20.02.1986 does not appear to be correct obviously.

1. It is thus evidently clear that he has not been engaged against any of the regular posts as claimed by him and also for the period claimed by him. A specimen copy of the contract under which he has been given causal assignment is annexed herewith and marked as Annexure-M-1. The claim of the workman is false and liable to be rejected.

2. The workman's contention that he has worked for more than 240 days in each of the two calender years is wrong and denied. The calculation made by him is false. Moreover, his service has never been terminated since he was to discharge his assignment for the period the contract has been assigned under the contractual obligations for causal assignee. The contention therefore brought out

under this para by the workman is totally foreign to his case and does not withstand the test of scrutiny. He is not eligible for regularization under the contract.

3. The contention under this para are baseless, fabricated and are aimed at gaining misplaced sympathy.

4. The contents of this para are a matter of record.

5. Being a casual assignee, he was given assignment on a written contract. His engagement has therefore neither been under daily rated causal employee against a regular post or otherwise of any other post except on casual assignment to render assistance in General News Room/ Hindi News Room.

6. The workman's assertion that he was paid salary on daily rated basis is not correct the workman was engaged on assignment basis to discharge his assignment for the period the contract has been assigned under the contractual obligations for casual assignee and was paid fee as per the scale prevailing.

7. The contention of the workman under this para is totally wrong. The workman has never been issued any letter or communication by any authorized officer except the contract entered into. The contractual engagement on assignment basis cannot be termed as engagement as daily rated employee.

8. The management do not want to make any comment on workman's disability and other information stated under this para except that he has worked with the management only for limited days in three years on casual assignment basis as mentioned in the preceding paragraphs, which does not make him eligible for regularization. The contents of para 8 of claim are denied for want to information.

9. The contents of para 9 are specifically denied. As has already been stated in reply to the proceding paragraphs, the services of the workman has never been terminated since he was to discharge his assignment for the period the contract was assigned under the contractual obligations for casual assignee. His engagement was neither under daily rated casual employee against a regular post or otherwise for any other post except on casual assignment. As far as his unemployment is concerned, the management has offered casual assignments to him during the Lok Adalat proceedings. However, the workman did not accept the offer of the management for his engagement on as and when required basis. This is brought to the notice to this Hon'ble Court that his issue has also come up for settlement before the Lok Adalat under the Central Government Industrial Tribunal-cum-Labour Court where the claim of the workman for his regularisation was rebutted on the legal grounds that he was not eligible for his regularisation under the instructions issued by the Govt. of India for regularization of casual labourers and also the departmental instructions for regularisation of casual assignees working against various posts issued from time to time since his engagement did not fall within the category of casual labourers or a casual artist against any of the post belonging to erswhile categories of Staff Artists.

The suggestions made by the Presiding Officer of the Lok Adalat to the workman to accept whatever assignment he is entitled to as and when offered by the Management was not accepted by the workman.

10. The question of his reinstatement in service as regular employee and other benefits does not arise since he was engaged on assignment basis to discharge his assignment for the period the contract was assigned under the contractual obligations for casual assignee. The contents of para 10 are denied specifically.

11. The contention of the workman under this para is baseless, fabricated and are aimed at gaining misplaced sympathy since he was engaged by the management on assignment basis as and when required. By preferring this application, he only wants to exploit the management for the casual assignments offered to him by them for his self-interests to get regularization for which he is not entitled under any of the rules on regularisation.

The workman's claim under this application is therefore liable to be dismissed outright. The last para of claim is prayer and the same is denied being false and frivolous.

Reply of the written statement on the behalf of the workman filed on 27.11.2002 as follows:—

1. That the contents of Para No. 1 of the written statement are misconceived, misleading and wrong, hence denied. It is denied that the workman has been engaged as causal assignee. It is denied that the certificate No. 1 (a) S-82 dated 16/2/1983 has not been issued by any authorized officer. It is submitted that the management deliberately, intentionally and malafidely concealing the true facts from this Hon'ble and only because of this the management is stating herein "the Record is very old".

It is also denied that the workman has not been engaged against any of the regular post as claimed and also for the period claimed by the workman. It is submitted that the contents of the corresponding para of the claim are reiterated and re-affirmed as correct.

2. That the contents of Para No. 2 of the written statement are wrong and denied. It is denied that the workman has not worked for more than 240 days in each of two calendar years. The contents of the corresponding para of the claim is reiterated and re-affirmed as correct.

3. That contents of Para No. 3 of the written statement are wrong and denied and the contents of the corresponding para of the claim is reiterated and re-affirmed as correct.

4. That the contents of para no. 4 of the written statement needs no reply.

5. That the contents of Para No. 5 of the written statement are wrong and denied and the contents of corresponding para of the claim is reiterated and reaffirmed as correct.

6. That the contents of Para No. 6 of the written statement are misleading and misconceived, wrong and hence denied and the contents of the corresponding para of the claim are reiterated and re-affirmed as correct.

7. That the contents of Para No. 7 of the written statement are misleading, misconceived, wrong and denied in toto and the contents of corresponding para of the claim are reiterated and re-affirmed as correct.

8. That the contents of Para No. 8 of the written statement are wrong and denied. It is submitted that the workman has worked with the management since 1982 till 1998 on daily rated basis. It is also denied that the workman was employed on contract/casual assignment basis. The contents of the corresponding para of the claim is reiterated and re-affirmed as correct.

9. That the contents of Para 9 of the written statement are misleading, illegal and wrong, hence denied. It is denied that the services of the workman has never been terminated since he has to discharge his assignment for the period the contract was assigned under the contractual obligations for casual assignee. It is also denied that his engagement was neither under daily rated causal employee against a regular post or for any other post except on casual assignment. It is also denied that the management has offered employment to the workman. It is also denied that the management was working with the management since 1982 against a job of permanent nature and the management deliberately and intentionally and illegally terminated the services of the workman.

The contents of corresponding para of the claim is reiterated and re-affirmed as correct.

10. That the contents of Para No. 10 of the written statement are wrong and denied and the contents of the corresponding para of the claim are reiterated and re-affirmed as correct.

11. That the contents of Para No. 11 of the written statement illegal, wrong and hence denied. The contents of the corresponding para of the claim are reiterated and re-affirmed as correct.

Contents of prayer clause and verification clause of the management in the written statement is wrong and denied. The contents of prayer clause of the claim are reiterated and re-affirmed as correct.

My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:—

"Whether Sh. Mahipal Singh S/o Sh. Ghamandhi Lal who worked as casual artist with All India Radio, News Services Division for 72 days in 1996, 150 days in 1997 and 90 days in 1998 is entitled to regularization of his services? If yes, to what relief and benefits the workkan is entitled and from what date ?"

Workman in support of his case filed his affidavit in evidence on 29/3/2005. Wherein he stated as follows:

1. That the deponent has been in the employment of the management of the All India Radio for the last years since 1982 to 31.08.1998 at the post of peon as IVth class workman. The period for which the workman has worked with the said management are given as under:—

01-10-1982	to 02-02-1983	124 days
16-08-1986	to 20-02-1987	248 days
01-01-1996	to 31-03-1996	90 days
01-08-1997	to 31-12-1997	150 days
01-05-1998	to 31-08-1998	114 days

2. That the deponent has worked 248 days in English calendar year since 16-08-1986 to 2-02-1987 and again from 01-08-1997 to 31-08-1998 for more than 240 days and the deponent requested the management to regularize his services but the management instead of regularization of the services turned annoyed with the said demand of regularizing the services and terminated the services of the deponent with effect from 31-08-1998 by way of refusal from duty without giving any notice/notice pay in lieu thereof.

3. That the deponent approached the management personally a number of time and requested for duty but the management flatly refused to take the deponent on duty and thereafter the deponent gave a letter to the management on dated 23.09.1998 personally but the management again refused the deponent to take duty, the said letter is exhibit as Ex. WE-1/1.

4. The deponent thereafter was constrained to file an application before the conciliation Officer/Asstt. Commissioner, Labour Court, Central Curzon Road, New Delhi *vide* application dated 26.02.1999, the same is here as Ex-WE-1/2. There the management filed its reply dated 23.06.1999, Exhibit WE-1/3 admitting that the deponent has worked with the management but they refused the deponent has worked with the management but they refused the deponent to take back on duty, consequently the conciliation officer sent the matter for appropriate action to the Government of India, Ministry of Labour "BHARAT SARKAR SHRAM MANTRALYA" New Delhi and the Ministry of Labour has referred the present matter to this Hon'ble Court for adjudication. The reference is as under and the same is already on record.

"Whether Sh. Mahipal Singh S/o Sh. Ghamandhi Lal who worked as casual artist with All India Radio, News Services Division for 72 days in 1996, 150 days in 1997 and 90 days in 1998 is entitled to regularization of his services? If yes, to what relief and benefits the workman is entitled and from what date?"

5. That the deponent submits I was not given any appointment letter at any period was directly given duty by the management, however may attendance was being marked in the attendance register of the management.

6. That the deponent submits that I was being paid salary on daily rated basis but I was never engaged on the contract basis as stated by the management before the conciliation officer in reply to the application of the deponent. The photocopies of the cheque against the daily wages are marked here as Mark-A to L.

7. That the deponent was issued various certificates in may favour by the management which are exhibited here as Ex WE-1/4 to 1/7 and these certificates proves that the deponent was engaged on daily rated basis by the management. The various gate passes and entry cards issued by the management to the deponent are exhibited here as Ex, WE-1/8 Collectively.

8. That the date of birth of deponent is 01.07.1967 and the deponent is also a handicapped person having disability of Post Polio paralysis of right lower limb, Doctor opined in the certificate as the deponent is disabled person having disability of 40% and the disability certificate is Exhibited here as Ex-1/9. Thus the deponent is unable to do any heavy works well as he has spent his valuable years of life with the said management and how I am not able to get any job anywhere as I have tried my best but could not get succeeded.

9. That the deponent is unemployed since the date of illegal termination of services by the management and is dependent on others mercy.

10. That the deponent is entitled for reinstatement on the services as regular employee with the management with full back wages, continuity of services including all consequential benefits.

11. That the act of illegal termination of the services of the deponent is highly illegal, invalid and unjustified, against the principles of natural justice and also contrary to the provisions of Industrial Dispute Act 1947 (as amended up to date) and also a unfair labour practice.

Subsequently affidavit of workman was tendered exhibit WW1/1. He also proved photocopies of document WW 1/1 to WW 1/9.

He was cross-examined by Shri Sanjay Aggarwal A/R for the management.His cross-examination is as follows:—

I have brought the original documents. Objected to the mode of exhibition of the photo-copies. The witness has shown the Exhibit No. W 1/4, W 1/5 W-1/9. I am 8th passed. I do not know how to read English. I was not issued any appointment letter by the management. It is incorrect that I have adduced evidence beyond pleading and reference and all evidence adduced by me is irrelevant. It is incorrect that I have not worked 240 or more days in any year. It is incorrect to suggest that I have filed forged documents for the year 1982-83/86. It is also incorrect to suggest that my entire case is based on forged documents. It is correct that I was given work as and when required. It is incorrect to suggest that I am not entitled to any claim.

Thereafter workman closed his evidence.

Management in support of his case filed affidavit of Shri D.K. Dass on 4.11.2007. Wherein he stated as follows:—

1. That the case of worker is beyond reference.

2. That he has been engaged as casual assignee to assist manually in General News Room/Hindi News Room at the prescribed fee for the categories of casual assignees for the following period:

Year	No. of days he performed duty
1996	72 days
1997	150 days
1998	90 days

3. That as regards his claim for the period from 01.10.1982 to 02.02.1983, it is respectfully submitted that the certificate No. 1(9) S-82 dated 16.02.1983 has not been issued by any authorized officer. As regards it is correctness, it may be stated that this being very old, it has not been possible to lay hands on the record to verify it, the period 16.08.1986 to 20.02.1987 does not appear to be correct obvisouly and are forged ones.

4. That he has not been engaged against any of the regular posts as claimed by him and also for the period claimed by him. A specimen copy of the contract under which he has been given casual assignment is annexed herewith the worked as Annexure-MI. the claim of the workman is false and liable to be rejected.

5. That the workman's contention that he has worked for more than 240 days in each of the two calendar years is wrong and denied. The calculation made by him is false. Moreover, his service has never been terminated since he was to discharge his assignment for the period the contract had been assigned under the contractual obligations for casual assignee. The contention, therefore, brought out under this para by the workman is totally foreign to his case and does not withstand the test of scrutiny. He is not eligible for regularization under the contract.

6. That this engagement has, therefore, neither been under daily rated casual employee against a regular post or otherwise for any other post except on casual assignment to render assistance in General News Room/Hindi News Room.

7. That the workman's assertion that he was paid salary on daily rated basis is not correct. The workman was engaged on assignment basis to discharge his assignment for the period the contract has been assigned under the contractual obligations for casual assignee and was paid fee as per the scale prevailing.

8. That he has worked with the management only for limited days in three years on casual assignment basis, which does not make him eligible for regularization.

9. That complete case of workman is liable to be rejected.

He was cross-examined by Sh. S.P. Singh A/R for the workman. His cross-examination is as follows:—

I joined the Mgt. in June, 2007 and I am aware with the fact and circumstances of the present dispute and my duty hours in the office 9:30 A.M. to 6:00 P.M. I do not recollect whether I was in office on 5th November, 2007 (Vol.) I was on leave. The present affidavit was got typed in my office staff same as it was of earlier of Sh. Gurucharan Singh Bedi and the contest of the affidavit of Sh. Gurucharan Singh Bedi as it is and my council as advice me to copy the same. I signed the said affdavit in the chamber of advocate in Tis Hazari Court and after the signing the same I returned back from the chamber of the advocate. The typing did not took at my instance by the typist the same was copied from previous affidavit of Sh. Gurucharan Singh. I do not know how many days claimants has worked in 1996, 1997 & 1998 with Mgt. I am not aware of the content of the affidavit hence I connot tell the workman has worked from 150 days in 1997 (Vol.) It may be less or more than 150. My reply is same from three year 1996 & 1998. As our office does not have any record 1986, 1987 we cannot say whether the workman has worked for 248 days in between 16/8/1986 to 20/2/1987. The workman has worked on contract basis on daily wages basis as casual labourer. We have not signed any contract with the workman in writing at the time of joining the services of the All India Radio (Vol.) He might be working in the other department of AIR and the same might have issued by the other department. The contents of exhibit M1 are admitted more specifically in respect of wages @ Rs. 850 per day. It is correct that the document dated 16/02/1983 has been isued by our office All India Radio, News Service Division which is exhibit WE1/4 (Vol.) I am aware about the name of Head Cleark working at that time. I have no knowledge about the document dated 22/8/1998 WE1/5 as the same is in Hindi and I do not know Hindi. I do not have any knowledge about the document mentioned in the list of document filed by workman from page No. 1 to 33 but the same has been issued by the main building of All India Radio. It is correct as per our record that the workman has worked for 240 days fromt the year in 1997 to 1998 on daily wages basis. It is correct that I do not have any sufficient knowledge about the dispute in question as well as documents pertaining to the dispute in question. It is wrong to suggest that I am not aware about the contents of the affidavit. It is wrong to suggest that I am deposing falsely.

Thereafter workman closed his evidence.

Written Argument on behalf of the workman are as follow:—

1. That this poor workman having 40% disability from Post Polio *vide* Ex. WE-1/9 humbly submit that the workman has all along been victimized arbitrarily treated. In the matter the workman was all along handicapped for the reasons that he was not in a position to claim any thing from the management since under the sword-‘‘Take it or go" and hence the services of the workman were illegally terminated by the management of All India Radio. The workman has personally visited the management to take him on duty and also wrot letters. Ex. WE-1/1 but the workman was not taken on duty.

2. That now the management have submitted a totally false picture. It is submitted that the workman has worked with All India Radio for 248 days from 16.8.1986 to 20.02.1987 and from 01.8.1997 to 31.08.1998 for 114 days. The gate pass and entry cards are exhibited as EX-WE-1/8 (Colly). It has totally been suppressed that the work is of a continuously nature in so much so that the main function of the News Services Division is preparation of bulleting and the management instead fo having regular group 'D' employee for the so called manual work — a term for the work is given as peon, the management from time post, much earlier than 1982 resorted to engagement the employees on assignment basis while the workman has worked with the management for 124 days from 01.10.1982 to 02.02.1983.

3. That against fairness and co-operation with the judicial authorities, totally against procedure, the management has come forward with a total resorted facts. The management have suppressed facts as to the details as to how many such employees had been engaged or are being engaged for the purpose. Further to this the management have also suppressed the fact that there is binding order of the Central Administrative Tribunal, who had jurisdiction in the matter.

4. That the whole scheme regarding Contract, piecemeal on assignment basis came for consideration of the Central Administrative Tribunal, Principal Bench, New Delhi, is case Vasudev & Ors. *Vs.* Union of India & an. (1991) 17 ATC 679, a copy of which has been annexed at

ANNEXURE-P-1

(i) That in para 6, thereof it has been observed that this stop gan arrangement was being done so that none should become eligible for regular appointment. The Tribunal after considering all aspects of the matter, directed that a scheme should be formulated for all the categories engaged on such assignment basis who had completed 120 days whether in service or not form 1980 onwards, as per giving seniority on the basis when they earliest completed 120 days, and regularize them without resorting to recruitment.

(ii) That this order (Supra) relatels to such employees of Doordarshan where work was being given 10 days in a month. In case of All India Radio, they acted more arbitrarily and had resorted to give assignment for 6 days in a month only. Such employees also approached the Central Administative Tribunal in case Suresh & Ors. *Vs.* Union of India, a copy of the order is at ANNEXURE-P-2. That in the matter, the Tribunal directed to make a revised scheme on the basis of the observation earlier made in Vasudeva's case, emplained in sub-para (i) above.

(iii) That this clearly admits that for the survival of such employees, they were continued to be given monthly assignment for 10/6 days in a month. This was totally unfair and arbitrary. In the circumstances as per the binding order management was to formulate a scheme to regularize them for their livelihood assignments per month as committed should continued to be given.

5. It is humbly sumbmitted that this poor worker continued to work from 1.10.1982 to 02.02.1983 and thereafter 16.8.1986 to 31.8.1998 as per the certificate produced. This is supported by the certificate (Ex. WW-1/ 4 to 1/7) of Head clerk, who is the only competent authority who maintains records. It is totally wrong to claim him as an incompetent authority. An officer working under the Union Government is subject to the Conduct Rules and in the position of making any unauthorized action is liable to the penalized. Thus to say that the certificates (Ex. WW-1/ 4 to 1/7) given were not correct, is totally wrong. It is submitted that Cash Book is a permanent document and the authorities/witness of the management should have well ascertained the position from there before deposing before this Hon'ble Court.

6. That it was for favour and favoritism that this poor worker was denied work thereafter for considerable period in order to provide those who found favour of the management. It was only after the order of the Tribunal, mentioned above, that they resorted to call the workman, It is humbly submitted that the Hon'ble Supreme Court in Ghaziabad Development Authority Vs. Vikram Chaudhary Jt. 1995 (5) SC 536, has observed that those such employees engaged first should be re-engaged as per their initial seniority. Thus this poor workman had a pre-emptive right for re-engagement, which management resorted and as admitted given assignments for 248 days inform 01.08.86 to 20.02.87, 90 days in 1996, 150 days in 1997 and 114 days in 1998.

7. That in the facts and circumstances, this poor workman submits that the management should have submitted the correct record before the Hon'ble Court but the management failed to submit the same. The management failed to give details of all such employees engaged for such work at least from 1996 which would have explained that they the management had been changing hands, the work is of regular nature which is obvious for the reason that much important work cannot be done in office without the help of Group 'D' employees. The management have also failed to submit that whether the authorities were under law to prepare a scheme as per the direction of the Tribunal and whether such a scheme was not drawn by DGAIR (Proper) and employees regularized.

8. That thus this poor workman has been illegally denied this 'Livelihood' by wrong termination, retaining juniors-totally against the binding law declared by the Hon'ble Supreme Court in case Ghaziabad Development Authority. It is against the Article 21 of the Constitution to deprive me of the 'Livelihood 'even as per the promise to continue for 16 days in a month. That thus the workman have suffered at the hands of the Management by way of termination of the services without any reason despite the fact that the workman has worked for more than 240 days in one year as stated in the claim petition as well as in the affidavit of evidence of the workman.

9. The witness of management has admitted that the workman was working as casual worker this A-1-R on daily wages and has also admitted the documents of workman in his cross examination (*see* last 10 lines of cross examination). It is evident from the documents Mark A to I that the workman used to receive salary/wages through cheques. It has also been admitted by the witness of the management that the documents place on record were issued by the management (kindly perused the cross examination of the management witness.)

10. That the workman has devoted his whole life in the work of the management and at this stage is at starvation as he is unable to get jot due to disability while after terminating the services of the workman, the management has given advertisements for recruitment of employee but the workman was no employed.

It is humbly prayed that the workman immediate be reinstated in the services with full back wages. Further the respondent/management be directed to regularize the handicapped workman in terms of the scheme, taking 1982 as his seniority.

Written submission on behalf of management are as follows:—

1. Reference under section 2(A) of section 10 of Industrial Disputes Act made in the above case reads as under:—

> "Whether Sh. Mahipal Singh S/o Sh. Ghamandhi Lal who worked as casual artist with All India Radio, News Services Divison for 72 days in 1996, 150 days in 1997 and 90 days in 1998 is entitled to regularization of his service? If yes, to what relief and benefits the workman is entitled and from what date?"

2. That this Hon'ble Tribunal is vested with specific jurisdiction circumscribed by the terms of an order of reference. Thus, this Hon'ble Tribunal is to decide:—

(a) Whether workman worked continuously for 240 days in a year, if so;

(b) Whether the workman is entitled to regularization in service.

THE AVERTMENTS MADE IN THE STATEMENT OF CLAIM FILED BY WORKMAN

3. The workman has been in employment of management for last many years since 1982 as Peon as Class-IV worker as detailed below:—

1.	01.10.1982 to 02.02.1983	Not in reference
2.	16.8.1986 to 20.02.1986	-do-
3.	01.01.1996 to 31.03.1996	90 dyas reference is made for 72 days and management's record is also 72 days.
4.	01.08.1997 to 31.12.1997	150 days
5.	10.05.1998 to 31.08.1998	114 days

4. The workman has alleged in the petition that he worked since 01.08.1997 to 31.08.1998 for 240 days.

WRITTEN STATEMENT ON BEHALF OF MANAGEMENT IN BRIEF:—

5. That workman was engaged a casual Assignee to assist manually in General News Room/Hindi News Room at the prescribed fee for the categories of casual assignee for:—

1996 — 72 days

1997 — 150 days

1998 — 90 days

As such, the workman has never worked for 240 days in a year and filed the case.

6. As regards him claim for period 01.10.1982 to 02.02.1983 (not in reference), the Certificate No. 1(9) S-82 dt. 16.02.1983 has not been issued by authorized and competent person from the administration. It is being very old record not available. The period from 20.02.1986 to 16.08.1986 is not correct. Workman has not been engaged against any regular posts of vacancy and was not engaged for the period claimed by him. A copy of assignment attached as M-1. He was not eligible for his regularization under instruction of Govt. of india for regularization of casual labour (Grant of Temporary status and regularization) scheme of GOI, 1953 effective from 1/9/1993, the para 4 of the Scheme is reproduced as below:—

> "Temporary status would be conferred on all casual labours who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days, 206 days in the case of Officers observing 5 days in a week." (Copy of the Scheme is enclosed).

7. His engagement does not fall within the category of casual artist against and of the posts of erstwhile category of staff Artists.

8. The intermittent casual engagement as and when required cannot be termed as engagement at daily rated employee in continuation.

9. The services of the claimant was of the nature of unskilled and has not been terminated since he was to discharge his assignment for the period he was assigned casual obligation. His engagement was not either on daily rated casual employee or against regular post. Submissions by way of Written Arguments.

10. Scope of reference is limited for the period 1996-72 days; 1997-150 days; 1998-90 days. The workman has wrongly and with *malafide* intention expanded it to 1982.

11. However, it is submitted that if we refer to the schedule made hereinabove, the workman has not worked continuously for 240 days in any year.

After leaving on 02.02.1983, workman given casual engagement after gap of 3 years (absent - gap) from 16.08.1986 to 20.2.1987 (160 days). He left on 20.02.1987 at his own connivances and then (re-assignment) given to him pathetic ground only after a gap of 9 years.

12. Came to work on 01.01.1996 to 31.03.1996 - 90 days which is wrong because in reference it was 72 days.

13. Then workman engaged on casual basis on 01.08.1997, workman came to work on 10.05.1998, so he has not worked continuously for 240 days in any years.

14. Then again he was disengaged on 31.12.1997, workman came to work on 10.05.1998, so he has not worked continuously for 240 days in any years.

15. The workman in his Statement of Account and through written Submissions alleged that he worked for 240 days in last Calendar year since 01.08.1997 to 31.08.1998. This is patently false. He has not worked continuously. After disengagement on 31.12.1997, he re-engaged from 10.05.1998 (that he was not in service for 31.12.1997 to 10.05.1998). Secondly it is not in a year. It covers two different years 1997 and 1998.

16. Hence he has not worked continuously for 240 days in a year. For this no evidence except his bare Statement. Burden was on workman to prove.

So it cannot be held that he worked for 240 days continuously in a year as held in (2006) 9 SCC 132.

Termination

17. As submitted in evidence by Affidavit and admitted in Cross Examination which supported by M-1, admitted that workman has worked on contract basis on daily wages as Casual Labour. So as the period of contract ended. The workman left the job. Hence no question of termination of service. His service was not terminated by the management and even the workman led no evidence to show that his services were terminated.

18. The Statement of Claim filed by the workman if false, misleading, misconceived and devoid of factual position. He has been engaged as Casual assignee on and when required basis to assist manually in General News Room/Hindi News Room at prescribed fee for casual assignee for following period.

1996—72 days

1997—150 days

1998—90 days

19. The averment to workman that he worked in one Calendar year for 240 days is apparently false and incorrect. Calendar year mean starting from 1st January of each year 31st of day of December of same year. It is not so alleged by the workman.

20. The workman was engaged on casual assignment basis to discharge his assignment for the period of contract/ assigned under the contractual obligation for which payment was made as per prescribed prevailing to casual assignee. The contractual engagement on assignment basis cannot be termed or equated to engagement as daily rated employee. This fact is confirmed that he worked for specific period as shown in the Schedule mentioned here in above and there is no denial by workman. He was never employed as casual employee against regular post or any vacancy except that he was as casual workman on daily rated assignment as is evident from Annexure M-1 annexed to Evidence Affidavit.

21. The alleged Letter for the year 1982-83 for the post of Peon is false, fabricated and not signed by competent and authorized Person and being old one and not on record.

22. The workman did not work for 240 days in any year and thus not eligible for regularization. As he has been engaged on casual assignment on as and when under a contract as mentioned in written statement also, his services were not terminated, but to come to end on expiry of contractual period.

It is pertinent to mention here that in the Lok Adalat where matter was referred, the management offered the job on contractual basis as was being engaged earlier, but he refused.

GROUNDS:—

In the matter of regularization of casual/contractual employees have been examined by the constitutional bench of the Hon'ble Supreme Court and in the case in question, was dealt with from social angle, decision given in the case of Secretary, State of Karnataka and Ors. *Vs*. Uma Devi and Qrs. "While deciding various appeal cases and observations made therein by the Constitutional Bench of Apex Court, in Appeal (Civil) 3595-3612 of 1999 WITH CIVIL APPEAL No. 1861-2063/2001, 3849/2001, 3520/ 3524/2002 AND CIVIL APPEAL No. 1968 OF 2006 rising out of SLP © 103-9105 of 2001 P.K. Balsubramanayan, J. Leave/Grant in SLP © Nos. 9103-9105 of 2001. Date of Judgment 10/4/2006.

The most relevant Paras are given in the citation are given below:—

... merely because, an employee had continued under cover of an order of Court, which we have described as Litigous employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. (Para 34).

... It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open... (Para 36).

... It cannot also be relied on to claim a right to be absorbed inservice even through they have never been selected in terms of the relevant recruitment rules. The argument on article 14 and 16 of the constitution are therefore overruled. (Para 39).

... It is argued that in a country like India where there is so much poverty and unemployment and there is no equaity of bargaining power, the action of the state is not making the employment permanent, would be violate of Article 21 of the Constitution. But the very argument

indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic feature, has included Article 14 & 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. (Para 41)

... It is also clarified that those decision which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents. (Para 45).

23. Management shall refer to Written Statement and Evidence at the time of oral arguments.

24. The claim by the workman is false and may kindly be dismissed as he is not entitled to any relief.

In the light of contentions and counter contentions I perused the pleadings & evidence of parties, principles laid down in the ruling cited by Ld ARs for the parties as well as I perused the settled law of Hon'ble Supreme Court & Hon'ble High Court of Delhi.

It is admitted fact that Ministry of Labour *Vide* Notification No. L-42012/206/99/IR(DU) dated 27/1/2000 referred the Industrial Dispute in the instant case to this tribunal for adjudication. Against which management of ALL INDIA RADIO has filed no writ-petition to challenge it on the ground that workman has not completed work for 240 days. Non-filing of writ-petition as a available remedy goes against management. Hence on this count management cannot assail the reference. Moreover workman in support of his case produced his evidence to show that he worked for about 240 days. In these circumstances burden was on employer to produce the attendance register to controvert the workman's claim as to the number of days he had actually worked, will lead to an inference of the correctness of the workman claim.

In this regard there is settled Law of Supreme Court in case of H.D. Singh *Vs*. Reserve Bank of India, (1985) 4 SCC 201.

Where in their Lordship of Hon'ble Supreme Court laid down following principle:—

Employer's failure to produce the attendance register to controvert the workman's claim as to the number of days he had actually worked, will lead to an inference of the correctness of the workman's claim.

Which applies with full force in the instant case in want of evidence of management on the point. Hence an inference of correctness of the workman's claim *i.e.* he worked for 240 days shall be drawn.

On the basis of evidence on record I am of considered view that workman/claimant was casual worker on daily rated basis. Who worked for more than 240 days continuously as required by settled law of Hon'ble Supreme Court. His termination is illegal and in contravention of provisions of S. 25-F of the Industrial Dispute Act. In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr *Vs.* Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000/- (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh *Vs.* Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Honble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited *Vs.* Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus," grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated: 11/12/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 327.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, डिपार्टमेंट ऑफ़ टेलिकॉम, होशियारपुर, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2,

चंडीगढ़ के पंचाट (संदर्भ संख्या 310/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[एल-40012/18/2000-आईआर(डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

S.O. 327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 310/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Department of Telecom, Hoshiarpur, Punjab and their workman, which was received by the Central Government on 31/12/13.

[No. L-40012/18/2000-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI KEWAL KRISHAN, Presiding Officer.

Case No.: I.D. No. 310/2005

Registered on 11/8/2005

Sh. Dinesh Thakur, C/o Sh. N.K. Jeet, President, Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bathinda.

.....Petitioner

Versus

The General Manager, Department of Telecom, Hoshiarpur.

.....Respondent

APPEARANCES

For the workman Sh. Charanjeet Adv.

For the Management Sh. Anish Babbar Adv.

AWARD

(Passed on 10.12.2013)

Central Government *vide* Notification No. L-40012/18/2000/IR(DU) Dated 29.5.2000, by exercising its powers under Section 10 sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the General Manager, Telecom, Hoshiarpur in ordering disengagement/ termination of services of Sh. Dinesh Thakur a workman engaged through contractor Sh. Ashok Kumar Sharma, *w.e.f.* 1/3/99 is legal and justified? If not, to what relief the workman is entitled and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he served in the O/o SDO(T) Hoshiarpur as Clerk on a permanent job from 1.9.1996 and was drawing Rs. 2138/- as monthly wages. His services were terminated on 28.2.1999 without notice, charge-sheet, inquiry or compensation. That his termination is illegal and against the provisions of the Act. That juniors to him were retained by the management and even new persons were recruited without calling the workman. That he be reinstated with all the consequential benefits.

Respondent management filed written reply controverting the averments pleading that the workman was never engaged by the management nor he was paid any salary. That the management has given contract to Sh. Gurbachan for providing the labour and the management did not maintain any service record with regard to the labourers supplied by the contractor. That management is not aware about the workman whether he worked with the contractor.

An objection that the Tribunal has no jurisdiction to decide the matter was also taken.

Parties led their evidence. In support of its case, Dinesh Thakur workman appeared in the witness-box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand management examined Surinder Singh who filed his affidavit supporting the version as given in the written statement.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was argued by the learned counsel for the workman that workman continuously worked with the management from 1.9.1996 to 28.2.1999 as Clerk and his services were illegally terminated and even without paying him any retrenchment compensation. He has further argued that the persons who were junior to the workman were kept in employment and even new persons were employed and thus the termination is in violation of the provisions of the Act and he is entitled to be reinstated in service.

The learned counsel further carried on through Clause 6 of the Agreement dated 13.12.1996 and 16.3.1998 placed on record by the management and submitted that as per Clause 6 of the Agreement the labourers were to be controlled by the AE/SDO and thus the workman even if employed by the contractor, was working under the control of the management and was its employee and his services were not liable to be terminated without complying with the provisions of the Act.

I have considered the contentions of the learned counsel for the workman.

The workman has pleaded in his statement of claim that he was serving as Clerk in the Office of SDO(T) Hoshiarpur from 1.9.1996 drawing Rs. 2138/- as monthly wages and his services were terminated on 28.2.1999. Thus, according to him he was appointed as Clerk by the management but he did not produce any appointment letter on the file. Respondent management is a statutory body and is governed by Rules and Regulations. It has to follow certain procedure to employ a person as Clerk but there is nothing on the file that any procedure was adopted while employing the workman as clerk with the management. In the circumstances, it cannot be said that the workman worked as Clerk with the management. Even while appearing in the witness box he admitted during cross-examination that he was engaged as a casual labourer and when it is so, it cannot be said that he was employed as Clerk by the management.

Though reliance was placed on Clause 6 of the agreement dated 13.12.1996 and 16.3.1998, but it was argued at length that the said agreement is not proved on the file. Be that as it may, the question to be seen is whether the workman was ever employed by the management. As discussed above, it is not proved on the file that he was employed by the management and therefore, the agreements if not proved on the file are of no consequence.

It is the case of the management that it has given contract for employing labourers for it and as per Clause 6, of the said agreement the utilization of the labourers was to be controlled by AE/SDO. The services of the labourers was to be utilized by the Department and certainly under the supervision of its officers. This Clause do not go to show at all that the workmen employed by the contractor were actually the employees of the management.

Since the workman has failed to prove that he was an employee of the management, he cannot be heard to say that the persons who were junior to him were retained in service and even some other persons were employed by the management. Attention was also drawn towards copies of the attendance register from 1.10.1996 to 31.12.1996, 1.8.1997 to 31.8.1997, 1.10.1997 to 31.10.1997, 1.1.1998 to 28.2.1998 and 1.2.1999 to 28.2.1999 to submit that the presence of the workman was duly verified by SDO(T) Hoshiarpur and thus he was a employee of the management. Suffice to say that the said attendance-sheets are not proved on the file. However, if the SDO has certified the presence of the workman on particular days that do not prove the workman as the employee of the management. As stated above, the labourers engaged was to work under the control of the AE/SDO and the presence shown in the relevant register seems to have been marked for payment of wages to him by the contractor; and from the said documents the workman does not become an employee of the management.

Thus, the workman was not an employee of the management and his services were not terminated by it and workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2014

का॰आ॰ 328.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडर वर्क्स इंजीनियर, हेड क्वार्टर (एयर फॉर्स), चंडीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़** के पंचाट (संदर्भ संख्या 276/2005) प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-14012/29/2002-आईआर(डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th January, 2014

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 276/2005) of the Central Government Industrial Tribunal/Labour Court-II Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commander Works Engineer, Head Quarter (Air Force), Chandigarh and their workman, which was received by the Central Government on 31/12/2013.

[No. L-14012/29/2002-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SHRI A.K. RASTOGI, Presiding Officer.

Case No. I.D. No. 276/2005

Registered on 16.8.2005

Sh. Pawan Kumar, H.No. 704, Sector 47A, Chandigarh.

.....Petitioner

Versus

The Commander Works Engineer, Head Quarter (Air Force), Chandigarh.

.....Respondent

APPEARANCES:

For the workman : Sh. N.K. Nagar, Adv.

For the Management : Sh. D.R. Sharma, Adv.

AWARD

Passed on 10.7.2013

Central Government *vide* Notification No. L-14012/29/2002 IR(DU) Dated 5.8.2002, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Commander Works Engineer (Air Force), Chandigarh in terminating the services of Sh. Pawan Kumar, ex-DG Set Operator is just and fair? If not so, to what relief the workman is entitled?"

As per claim statement the workman had been selected as DG Set Operator in 1993. His working was being controlled and regulated by the management. His salary was also paid by the management but he was always shown to have been employed through different contractors. The said contractors were not the licensed contractors and contract employment is barred by law also. The management was the principal employer, of the workman. His services were abruptly terminated on 21.12.1998 by management and though he had rendered continuous service for more than 240 days from the date of his appointment till his termination yet the provisions of Section 25F of the Act were not complied with and after his termination new person was also employed without any intimation to him. He has prayed for his reinstatement and regularization.

The claim was contested by the management and it was alleged that the workman had never been selected or appointed by the management and he never worked under the management or was paid salary by the management. The allegation of the termination of his services by the management was also denied and the allegation of retaining junior was alleged to be incorrect. It was also denied that management was the principal employer of the workman.

In support of his case workman examined himself and filed log sheets marked W1 to W26 and also a photocopy of I. Card W27. On behalf of management affidavit of Hans Raj was filed but the workman failed to appear on 7.12.2010 and the case was ordered to proceed ex parte against him.

I heard the learned counsel for the management and perused the evidence on record. It was argued on behalf of management that the workman has alleged the relationship of employer and employee between the management and himself, while the management has denied it. Hence it was for the workman to prove the relationship; in which he had failed. In his cross-examination he has admitted that had not been given any appointment letter and at the time of joining he had been told that the contractor will look after the maintenance of DG Set. The log sheet relating to DG Set or the I. Card cannot be accepted as a proof of employment. There is no evidence that log sheet relates to respondent and the I. Card had been issued by a competent authority. At the same time there is no evidence that he was being paid salary by the management and his attendance was marked by the management.

I agree with the learned counsel for the management that there is no evidence to show the employment of the workman with the management. He has stated in the claim statement that he had been shown to have been employed through different contractors but the said contractor was not licensed contractor. This statement in claim statement shows that he has not stated the complete truth. This statement in the claim statement suggests the existence of a contractor. Anyway; it was for the workman to prove the relationship of master and servant and he has failed in discharging the burden and since he was not in the employment of the management hence, the question of termination of his services by the management does not arise. The reference is accordingly answered against the workman. Hard and soft copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2014

का॰आ॰ 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मेनेजर, एक्वा देसैन्स इंडिया लिमिटेड, चेन्नई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.12.2013 को प्राप्त हुआ था।

[सं॰ एल-42012/18/2010-आई आर (डी.यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No 10/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation tothe management of The General Manager, Aqua Designs India Ltd., Chennai and their workman, which was recived by the Central Government on 31.12.2013.

[No. L-42012/18/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 26th November, 2013

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 10/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between M/s. Aqua Designs India Limited and their workman]

BETWEEN

Sri K. Sivasankar : 1st party/Petitioner

AND

The General Manager : 2nd party/Respondent
M/s Aqua Designs India Ltd.
1, Jayanthi Nagar Extension
200 Ft. Road, Kolathur
Chennai-600099.

APPEARANCES:

For the : 1st party/Petitioner : M/s S. Sivakumar, Adovacte

For the : 2nd party/Management : Ex-parte

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/18/2010_IR (DU) dated 02.02.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order:

"Whether the action of the management of M/s Aqua Designs India Pvt. Ltd., Chennai, a Contractor of Nuclear Power Corporation of India Ltd. in terminating the services of Sri K. Sivasankar w.e.f. 18.07.2009 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 10/2012 and issued notice to both sides. The petitioner as well as respondent appeared through counsel and filed their claim and counter statement respectively. However, subsequently the Respondent has remained absent and has been set ex-parte.

3. The averments in the Claim Statement of the petitioner in brief are these:

The petitioner was appointed by the Respondent in M/s Aqua Designs India Ltd. as Electrician on 10.12.2006. The petitioner was working in the Company to the satisfaction of the authorities. In march 2009 he had taken leave on a day. On another day he had worked overtime for an hour. On 10.03.2009 and 15.03.2009 he had left his work early with the permission of the site in-charge. But the Respondent has deducted two days salary in the month of March 2009. The Respondent did not pay for four hour overtime work done the petitioner in February 2009. He had submitted a written requested to the site in-charge to pay the above amount. The petitioner did not get any reply. When he made enquiry about the letter the petitioner was assaulted. His Identity Card also was taken away from him. He had given a complaint to the Police in this respect. Since His Identity Card was taken away, the petitioner could not enter the premises of the company for attending work. He had written to the General Manager requesting to return the Identity Card. But the letters written by the petitioner met without any result. On 05.06.2009 the petitioner gave representation to the General Manager and Site in -charge of the Company and applied for leave till he rejoins duty. The petitioner then sent a representation to Labour Officer, Tuticorin and he directed to enquire into the matter and submit the report. On intervention by the Labour Officer, the Respondent issued a Show Cause Notice to the petitioner alleging that he has failed to report for duty and that he is to given explanation within 3 days. The petitioner was also asked to report for duty at the Head Office before 15.06.2009 on the basis of a Transfer Order dated 25.04.2009. But the petitioner had not received any Transfer Order. The Show Cause Notice was received by him only on 15.06.2009. So he was not in a position to join the office at Chennai on 15.06.2009. The petitioner was issued a termination order dated 18.07.2009 alongwith a Demand Draft of one month's pay. So the petitioner had filed a complaint to the Labour Office, tuticorin requesting to reinstate him with back wages. The Assistant Labour commissioner had sent a letter starting that conciliation has filed. Even though the petitioner has worked for more than 480 days the Respondent has failed to comply with Section-25F of the Industrial Disputes Act before terminating him from service. There is no justification in terminating the services of the petitioner. The petitioner is entitled to be reinstated in service with back wages, continuity of service and other attendant benefits.

4. The Respondent has filed a Counter Statement contenting as follows:

The Respondent has appointed the petitioner as Operator, by appointment order dated 29.12.2006. The petitioner was not regular in work from the beginning itself. He was orally warned on serveal occasions for his latches in work. On 10.03.2009 the petitioner has left the place of work without permission of the controlling Officer. He was given warning on account of this. In spite of this, on 15.03.2009 also he left the place of work without permission. He wanted his unauthorized absence to be considered as leave. Two days salary was cut and a warning letter was issued to the petitioner. Subsequently, the petitioner was transferred to the Corporate Office of Chennai by Transfer Order dated 24.05.2009. The petitioner refused to receive

the said order. So the order was displayed in the notice board of the RO Plant where the petitioner had been working. After 29.04.2009 the petitioner failed to report for duty either at the RO Plant or at the Corporate Office. A letter was issued to him asking him to report for duty on or before 08.06.2009. Since he failed to report for duty another letter was issued to him asking him to report for duty on 15.06.2009 at Chennai as per the Transfer Order. He was asked to Show Cause for his unauthorized absence also along with this. But still the petitioner did not rejoin duty. In the meanwhile the petitioner had sent the letter dated 05.06.2009 requesting for leave till he rejoins duty. But he did not specify the period of leave. Since the petitioner did not show any interest in continuing his service with the Respondent his service was terminated by letter dated 15.07.2009 giving him a Demand Draft for one month's pay. During Conciliation proceedings the Respondent has expressed willingness to provide employment to the petitioner if he reports for duty at the Corporate Office at Chennai but the petitioner refused to avail this opportunity. All the allegations made by the petitioner against the Respondent in the Claim Statement are denied. The petitioner is not entitled to any relief.

5. The evidence in the case consists of the Proof Affidavit filed by the petitioner in lieu of Chief Examination and the documents marked on his side as Exs. W1 to Ex. W21. The Respondent had failed to appear before the Court in spite of repeated postings and had to be set ex-parte.

6. **The points for consideration are**

(i) Whether the Respondent is justified in terminating the service of the petitioner?

(ii) Whether the Petitioner is entitled to be reinstated in service and if not to any other relief?

The Points

7. The petitioner has contented in the Claim Statement he was in the service of the Respondent company and that he was terminated from service without any justification. From the Counter Statement filed by the Respondent itself it is very much clear that the petitioner was in the service of the Respondent company. The Respondent has stated in its Counter Statement that they were carrying out work for the Nuclear Power Corporation of India Ltd. at Koodankulam Nuclear Power project and that the petitioner was appointed for the operation and maintenance of the Reverse Osmosis Plant of the Nuclear Power Project, by appointment order dated 29.12.2006. The petitioner was working with the Respondent until he was terminated from service by letter dated 15.07.2009. According to the Respondent, the petitioner has been regularly irregular in his duty. He was leaving the work premises without permission from the superior officer. He was becoming unauthorizedly absent also. In spite of warning he has refused to mend his ways. According to the Respondent, even while the petitioner was on unauthorized absence he was asked to join duty for which he has refused and then a Transfer Order was issued to him to report for duty in the office at Chennai to which also the petitioner did not respond. The petitioner is stated to have been terminated from service on account of all these.

8. It is clear from the very Counter Statement filed by the Respondent that before the petitioner was terminated from service an equiry was not conducted against the alleged breaches committed by the petitioner in his duty. What is state in the Counter Statement is that since the petitioner did not show any interest in continuing in the service of the Respondent a letter of termination was given to him with one month's pay. When allegation of breaches are made by the Respondent against the petitioner it was incumbent on the Respondent to obtain explanation from the petitioner and frame charge against him if the explanation is found not satisfactory, and also to enquire into the breaches allegedly committed by him. The termination of the petitioner from service without doing this itself is improrer.

9. The petitioner has filed Affidavit of Chief Examination reiterating under what circumstances he happended to be absent from duty. He has produced the representation given by the petitioner to the Site-In-charge asking to pay his salary for the days on leave and also for his overtime work and this is marked as Ex. W2. Ex. W3 is the copy of the complaint given by him to Sub-Inspector of Police alleging that he was assaulted on account of his demand for payment. Ex. W5 is the copy of the representation given by the petitioner to the General Manager of the Company. It is clear from the very Counter Statement filed by the Respondent that the petitioner did submit an application for leave until he is able to join duty. His case is that while he was assaulted his Identity Card was taken away and it became impossible for him to attend duty in the absence of Identity Card and it is accordingly he has submitted the leave application.

10. The Respondent having remained ex-parte there is no evidence available to disprove the evidence tendered by the petitioner through his Proof Affidavit and the documents marked on his behalf. There is nothing to show that the petitioner had been absent from duty unauthorizedly. There is nothing to show that the petitioner had committed breaches in doing his duty. Thus it could be seen that there is no evidence available on the side of the Respondent to justify the termination of the petitioner from the service also. What the Respondent has stated in the Counter Statement is that it was willing to take back the petitioner in service provided he was willing to report for duty at the Corporate Office at Chennai. This conduct of

the Respondent would show that the Respondent itself was aware of the injustice in terminating the services of the petitioner. I find that the petitioner is entitled to be reinstated in service.

11. The petitioner state in his Affidavit that for no fault of his he is out of job and is in severe financial problem. Considering this evidence of the petitioner I am inclined to allow him 50% back wages.

12. In view of my discussion above, the Respondent is directed to reinstate the petitioner in service within one month with 50% back wages. The petitioner is entitled to continuity of service and other attendant benefits also.

13. The reference is answered in favour of the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th November, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner Union	:	WW1, Sri K. Sivasankar
For the 2nd Party/ Management	:	None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	29.12.2006	Appointment order of the petitioner
Ex.W2	16.04.2009	Representation of the petitioner to the Site In-charge
Ex.W3	29.04.2009	Complaint given by the petitioner to the Sub-Inspector of Police
Ex.W4	30.04.2009	CSR given by the Police State
Ex.W5	02.05.2009	Representation of the petitioner to the GM
Ex.W6	29.05.2009	Application given by the petitioner to the Labour Officer
Ex.W7	29.05.2009	Letter submitted by the petitioner to the Superintendent of Police, Tirunelveli alongwith acknowledgement card.
Ex.W8	01.06.2009	Representation of the petitioner to the General Manager alongwith acknowledgement card
Ex.W9	05.06.2009	Representation of the petitioner to the Site In-charge alongwith acknowledgement card
Ex.W10	08.06.2009	Letter of the Labour Enforcement Officer
Ex.W11	12.06.2009	Show Cause Notice issued by the respondent to the petitioner alongwith its postal cover
Ex.W12	18.07.2009	Termination order issued by the respondent to the petitioner alongwith with a cheque
Ex.W13	03.08.2009	Legal notice issued by the petitoner to the Respondent
Ex.W14	03.08.2009	Application of the petitioner to the Labour Officer alongwith acknowledgement card
Ex.W15	19.08.2009	Death Certificate of the petitioner's father
Ex.W16	08.09.2009	Representation to the Assistant Labour Commissioner (Central), Madurai alongwith acknowledgement card
Ex.W17	10.09.2009	Application of the petitioner to the Regional Labour Commissioner, Chennai
Ex.W18	09.12.2009	Reply of the Respondent before Asstt. Labour Commissioner
Ex.W19	23.12.2009	Rejoinder submitted by the petitioner to Assistant Labour Commissioner, Madurai
Ex.W20	25.01.2010	Conciliation failure report of Assistant Labour Commissioner
Ex.W21	-	Salary slips of the petitioner

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 8 जनवरी, 2014

का॰आ॰ 330.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर नेशनल टेक्सटाइल कारपोरेशन कोयम्बटोर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 84/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/64/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 84/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, National Textile Corporation, Coimbatore and their workman, which was received by the Central Government on 31/12/2013.

[No. L-42012/64/2012-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 10th October, 2013

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 84/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of National Textile Corporation Ltd. and their workmen)

BETWEEN

1.	The Assistant General Secretary Desiya Panchalai Thozhilar Sangam Ramanathapuram, Coimbatore-45	:	1st Party/1st Petitioner Union
2.	The General Secretary Coimbatore District Mill Labour Union Anupparpalayam, Kattoor, Coimbatore-9	:	1st Party/2nd Petitioner Union
3.	The General Secretary Kovai Mandala Panchalai Thozhilar Sangam Vilankurichi, Coimbatore-35	:	1st Party/3rd Petitioner Union

AND

The General Manager National Textile Corporation, Coimbatore	:	2nd Party/ Respondent

APPEARANCE:

For the 1st Party/Petitioner	:	Sri S. Senthilnathan, Advocate
For the 2nd Party/Management	:	M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/64/2012-IR(DU) dated 06.11.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of National Textile Corporation, Coimbatore for not considering the demands of the petitioner unions *viz.* Coimbatore District Mill Labour Union (CIT), Kovai Mandala Panchalari Thozhilalar Sangam (NDLF) and Desiya Panchalai Thozhilalar Sangam (INTUC) in respect of revision of wages and benefits is justifiable or not? If not, what relief the petitioner unions are entitled to?"

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 84/2012 and issued notice to both sides. Initially Respondent has entered appearance through Advocate. However, though three organizations are arraigned as First Party, none of them have entered appearance or filed any Claim Statement. In the absence of any attempt on the part of the First Party to substantiate the case my predecessor has passed an award against the First Party. Subsequently, the General Secretary, Coimbatore District Mill Labour Union arraigned as Number-2 of the First Party has filed an application to restore the case to file and this was allowed. However, even after that the First Party has continued its lethargic stand. None of the organizations arraigned as First Party have come forward to file Claim Statement.

3. The issue raised by the First Party organizations is regarding revision of wages and benefits for the workers of the National Textile Corporation. Since no material has been placed before this Court to substantiate the case the First Party is not entitled to any relief. The reference is to be answered against the First Party.

4. In the result the First Party is found not entitled to any relief. The reference is answered against the First Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th October, 2013).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	None
For the 2nd Party/Management	:	None
Documents Marked on both sides	-	Nil.

नई दिल्ली, 8 जनवरी, 2014

का॰आ॰ 331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर नेशनल इंस्टिट्यूट ऑफ टीचर्स ट्रेनिंग चेन्नई के प्रबंधतंत्र के संबद्ध नियोजकों

और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 46/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/130/2011-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 46/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director, National Institute of Technical Teachers Training, Chennai and their workman, which was received by the Central Government on 31/12/2013.

[No. L-42012/130/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th November, 2013

PRESENT: K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 46/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of National Institute of Technical Teachers Training and Research, Taramani, Chennai and their workmen)

BETWEEN

Sri D. Shankarlal : 1st Party/Petitioner

AND

The Director, National Institute of Technical Teachers Training And Research, Taramani, Chennai-600013 : 2nd Party Respondent

APPEARANCE:

For the 1st Party/Petitioner : -

For the 2nd Party/Management : M/s. Sai Raaj & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/130/2011-IR (DU) dated 01.04.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of National Institute of Technical Teachers Training and Research Centre, Taramani, Chennai in not allowing to continue Sri D. Shankarlal on "Non-Muster Roll" basis followed with regularization, is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 46/2013 and issued notice to both sides. Both sides have entered appearance through their respective counsels.

3. The petitioner has earlier filed ID 84/2011 before this Tribunal directly regarding the same issue. So he does not want to proceed with the present ID that has been referred by the Government. He has endorsed stating that he does not want to proceed with this. Accordingly this ID is closed.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th November, 2013).

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 8 जनवरी, 2014

का॰आ॰ 332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मिनिस्ट्री ऑफ डिफेन्स न्यू देहली एंड ऑफिस कमांडिंग उत्तकमण्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 05/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-14012/41/2004-आई आर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 05/2005) of the Central Government Industrial tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ministry of Defence, New Delhi and Officer Commanding, Ootacamund and their workman, which was received by the Central Government on 31/12/13.

[No. L-14012/41/2004-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 20th December, 2013

PRESENT: K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 5/2005

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of The Officer Commanding, 68(I), ASC Suppliers, Wellington and their workman)

BETWEEN

Sri C. Chinnaraj : 1st Party/Petitioner

AND

1. Union of India Represented by its Secretary Ministry of Defence, New Delhi : 2nd Party/1st Respondent
2. The Officer Commanding 68(I), ASC Supplier PLASC Wellington Bazar P.O. Ootacamund-6432232 : 2nd Party/2nd Respondent

APPEARANCE

For the 1st Party/Petitioner`: M/s. T. Fennwalter Associates, Advocates

For the 2nd Party/1st and 2nd Respondent : Ms. K. Akilandeswari, Advocate

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-14012/41/2004-IR(DU) dated 25.11.2004, referred the Industrial Dispute between the above referred parties for adjudication.

The schedule mentioned in that order is:

"Whether the claim of Sri C. Chinnaraj for reinstatement with continuity of service and back wages against the Officer Commanding, 68(I), ASC Supplier PLASC, Wellingtone Bazar PO Ooty is legal and justified? If not, to what relief the workman is entitled to?"

2. On the receipt of Industrial Dispute, this Tribunal has numbered it as ID 5/2005 and sent notices to both sides. Both sides entered appearance through their respective counsel and filed their claim and counter statement respectively.

3. In the claim statement filed by the petitioner, the petitioner has contended as below:

The petitioner had entered the services of the 2nd Respondent as Mazdoor on 02.03.1998. He was working continuously in this capacity. After he had worked for more than 5 years, the petitioner had requested the management to regularize him in service. The Government of Inda vide order dated 10.09.1993 had issued instruction to appoint persons like the petitioner in permanent vacancies. Though the petitioner had represented to the Respondents to regularize him in the vacant post and they have refused to do so. Consequently the petitioner had filed application before the Central Administrative Tribunal (CAT) seeking regularization. While this was pending the petitioner was retrenched on 28.12.2001 without assigning any reason. He was not paid salary for his last month's work. Since the petitioner was retrenched from service he had withdrawn the application filed before the CAT. The petitioner was not given any notice as contemplated under the Industrial Disputes Act, before retrenchment. He was not given any compensation also. The petitioner is entitled for reinstatement with full back wages. The Respondents have to be directed to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits.

4. The Respondent have filed Counter Statement contending as follows:

The petitioner was employed as casual labourer on daily wages during the period between March 1998 and December, 2001. He was employed intermittently and not employed on regular basis. He has not rendered 240 days of continuous service in any year of employment. Regularization of service could not be done in the absence of conferment of temporary status to the petitioner. The petitioner was not considered for direct recruitment also in the absence of conferment of temporary status. Termination notice need not be issued to a casual labourer. Though in 2001, a notice of interview was sent to the petitioner for Group 'D' vacancy, he did not appear for the interview. The petitioner is not entitled to any relief. The petition is to be dismissed.

5. The points for consideration are:

(i) Whether the petitioner is entitled to reinstatement with continuity of service and back wages?

(ii) If the petitioner is not entitled to the above relief, what if any, is the other relief to which he is entitled?

6. The evidence in the case consists of oral evidence of petitioner examined as WW1 and the witness of the Respondent examined as MW1 and also the documents marked as Exs. W1 to Ex. W14 and Ex. M1 to Ex. M10.

The Points

7. The petitioner has stated in his Claim Statement that he has entered the service of the Respondent as a Mazdoor on 02.03.1998. In the counter statement filed by the Respondents it is admitted that the petitioner was employed as casual labourer on daily wages and he was working in this capacity for the period between March, 1998 to December, 2001.

8. The case that is advanced on behalf of the petitioner is that he is entitled to regularization in service on permanent vacancy in lieu of the government order dated 10.09.1993. The petitioner has also produced the concerned government orders.

9. On going through the concerned government Order it could be seen that the petitioner could not have been eligible for conferment of permanent status on the basis of said order. The copy of the order dated 10.09.1993 marked as Ex. W1 states that temporary status would be conferred on all casual labourers who are in employment on the date of issue of the order and who have rendered continuous service for at least 1 year. This means that they must have been engaged for at least 240 days (206 days in the case of Offices 5 days week). It could be seen from this itself that temporary status was to be conferred to only on persons who were in service as on 01.09.1993 and had rendered continuous service for 1 year. The petitioner, even as admitted by him has entered the services of the Respondent in 1998 only. Ex. W3 produced by the petitioner is the copy of a govt. order dated 24.04.1998 giving policy guideline of employment of casual labourers. This has specifically instructed that temporary status is not to be conferred on those who had not completed 240 or 206 days as the case may be, on 10.09.1993 and also on those employed as casual labourers subsequently. In the govt. order dated 10.09.1993 there is a direction that two out of three vacancies in Group "D" cadres in respective offices where casual labourers have been working would be filled up from among casual workers with temporary status. Thus it is clear that only if temporary status has been conferred, the petitioner would have been entitled to be considered for permanent post. Other than Ex. W1 and Ex. W3 no other orders showing entitlement of the petitioner for temporary status has been placed before me. So the case of the petitioner that he was eligible to be conferred with temporary status is to be rejected even at the outset.

10. Even though in his Claim Statement the petitioner has stated that he has been employed as casual labourer in 1998, the case in his Affidavit in Chief Examination is that he has started to do work with the Respondent in 1995 itself. In fact a perusal of the documents produced by the petitioner would show that the petitioner must have started to work earlier. Ex. W5 is the copy of the Attendance Register produced by the petitioner. The authtenticity of this document is not disputed by the Respondent. The first page of this document pertains to the attendance of the petitioner for the month of August 1997.

11. The argument that is advanced on behalf of the counsel for the petitioner is that the petitioner has been in continuous service with the Respondent and has completed more than 240 days in all the years he had worked. This case of the petitioner is disputed in the counter statement. According to the Respondents, the petitioner had worked for 194 days in 1998, 206 in 1999, 181 days in 2000 and 212 days in 2001. Initially, the Respondents did not produced the Attendance Register pertaining to the petitioner. After the matter has been posted in orders, the petitioner had got it reopened to make the Respondents produce documents including the Attendance Register. On the basis of the direction of this Court the Second Respondent has produced the Muster Roll of casual employees for the period from June, 1998 to February 2002. They have stated that the document prior to that period has been destroyed under the Defence Service Regulations. The Muster Roll thus produced has been marked as Ex. W10 at the instance of the petitioner. A perusal of the Muster Roll would reveal that the attendance of the petitioner marked in the Muster Roll is in consonance with the claim made in the Counter Statement. On perusing the Muster Roll it could also be seen that in most of the months the petitioner had worked only for 18 days or less than that. Same is the case with the other casual employees also. Thus, there is a deficit of several days to make out days of work to 240 days to bring the work of the petitioner within the definition of continuous service.

12. The argument that is advanced on behalf of the petitioner is that if Sundays and other holidays also are taken into account, the total number of working days of the petitioner in the year prior to his termination would be more than 240 days and therefore he is entitled to reinstatement in service. In this respect the counsel has referred to the decision of the Apex Court in workman of American Express International Banking Corporation Ws. Management American Express International Baning Corporation reported in AIR 1986 SC 458. It has been argued by the counsel that in the above decision the Apex Court

has taken into account Sundays and other leave days also for the calculation of 240 days work. It is true that the Apex Court has held that Sundays and other holidays also should be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked. However, the above dictum is accompanied by an addenda that the Sundays and other holidays so reckoned should have been days for which wages were paid to the worker. On going through Ex. M10, I find that the petitioner was not given any wages for Sundays or other days of the month on which he was left without any work. On all the months the number of days worked are counted and wage is seen paid only for those days. The petitioner was turned out from work in February, 2001. During this period wage for a day for casual work was Rs. 100/-. The petitioner had worked for 18 days in this month and he was paid Rs. 1800/-. In January, 2001 also he had worked for 18 days only and payment is in accordance with this. The amount payable to the petitioner and other casual workers is shown against their respective names in the Muster Rolls. It could be seen that during the entire period for which the petitioner had worked with the Second Respondent he was paid for the days he had worked only and not for Sundays, other holidays or the days on which he had not worked. So the dictum of the Apex Court in American Express case will not be applicable to the present case. The petitioner having failed to complete 240 days in the year preceding his termination, he could not be said to have been in continuous service with the Respondents. So the termination of the petitioner from service will not amount to retrenchment as contemplated in Section 25(F) of the Industrial Disputes Act. So the petitioner is not entitled to any relief.

In view of my findings above the reference is answered against the petitioner.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Sri Chinnaraj
For the 2nd Party/Management	:	MW1, Naib Subedar Sri P.K. Lenka

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex. W1	10.09.1993	Government of India instructions
Ex. W2	14.10.1993	Government of India instructions
Ex. W3	24.04.1998	Letter by Army Headquarters
Ex. W4	-	Temporary Identity Card issued to me
Ex. W5	-	Copy of Attendance Registers
Ex. W6	15.08.2000	Certificate of Appreciation
Ex. W7	04.01.2002	Representation by me to the Respondent for regularization of my service
Ex. W8	05.08.2002	Representation by me to the Respondent for regularization of my service
Ex. W9	17.02.2002	Legal notice with postal receipt
Ex. W10	-	Employment Card
Ex. W11	-	Transfer Certificate
Ex. W12	-	Community Certificate
Ex. W13	30.12.2001	OA No. 40 of 2002
Ex. W14	20.08.2002	Rejoinder filed by me in OA No. 40/2002

On the Management's side

Ex. No.	Date	Description
Ex M1	24.07.2012	Authorization letter of Respondent in the above ID
Ex. M2	21.02.2003	Copy of legal notice
Ex. M3	06.06.2002	OM No. 40011/6/2002-Estt. by Respondent
Ex. M4	10.09.1993	Office Memorandum
Ex. M5	14.10.1993	Departmental letter
Ex. M6	24.04.1998	Policy guidelines for employment of causal Labourers
Ex. M7	2002	Counter Affidavit filed by Respondents in OA No. 40/2002
Ex. M8	9/2010	Counter Affidavit in WP No. 29355/2007
Ex. M9	27.10.2011	Departmental letter ref. temporary status casual Labourers

नई दिल्ली, 8 जनवरी, 2014

का॰आ॰ 333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर भारत हैवी इलेक्ट्रिकल्स लिमिटेड थिरूचिराप्पल्ली, तमिलनाडु, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 02/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/12/2013 को प्राप्त हुआ था।

[सं॰ एल-42012/127/2012-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 8th January, 2014

S.O. 333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 2/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Executive Director, Bharat Heavy Electricals Ltd. Chennai and their workman which was received by the Central Government on 31.12.2013.

[No. L-42012/127/2012-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 25th November, 2013

PRESENT: K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 2/2013

(In the matter of the dispute for adjudication under clasue (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Heavy Electricals Ltd. and their workmen)

BETWEEN

Sri N. Manian : 1st Party/Petitioner

AND

The Executive Director M/s. Bharat Heavy Electricals Ltd., Tiruchirapalli, Tamilnadu 620014 : 2nd Party/Respondent

APPEARANCE:

For the 1st Party/Petitioner : Ex-parte

For the 2nd Party/Management : Sri A.V. Arun, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/127/2012-IR(DU) dated 09.01.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of the workman Sri N. Manian, S/o Natesan for employment of BHEL from 10.07.1993 is justified? If so, what relief the concerned workman is entitled to?"

2. On the receipt of the Industrial Dispute this Tribunal has numbered it as ID 2/2013 and issued notice to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively.

3. In spite of repeated postings, the petitioner has been absent. Today also the petitioner and his counsel were absent and there was no representation also on behalf of the petitioner, though, the Respondent was represented. Apart from filing the Claim Statement, the petitioner has not done anything to substantiate the claim. He seems to be not interested in pursuing the claim. In the absence of any material the Tribunal is unable to give a finding in favour of the petitioner.

4. The reference is answered against him and an award is passed accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th November, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Desciption
	N/A	

नई दिल्ली, 9 जनवरी, 2014

का॰आ॰ 334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, धनबाद के पंचाट (49/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं॰ एल-12011/118/2011-आईआर(बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 9th January, 2014

S.O. 334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 49/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Bank of

India and their workmen which was received by the Central Government on 29.11.2013.

[No L-12011/118/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEUXRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 49 of 2012

Employer in relation to the management of Bank of India, Patna

AND

Their workmen.

APPEARANCES:

For the employers:-None

For the Workman:-Sri Satish Rajak, Concerned Workman

State:-Jharkhand. Industry:-Banking

Dated 18-10-2013

AWARD

By order No. L-12011/118/2011/IR(B-II) dt. 18.10.2012 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bank of India acted erroneously in charging the workman for disciplinary action ? Whether the disciplinary authority looked into the merit of the case properly as per evidence value? If not, then what remedy lies to the workman?"

2. This Case is received from the Ministry on 30.10.2012. During the pendency of the case concerned workman files a petition for withdrawing this reference. It is felt that the dispute between parties is resolved. Hence "No dispute" award is passed. Communicate.

R.K. SARAN, Presiding Officer

आदेश

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 335.—जबकि केन्द्र सरकार का यह मत है कि भारतीय खाद्य निगम के प्रबंधन से संबंधित नियोक्ताओं एवं इसके साथ संलग्न अनुसूची के संबंध में उनके कामगारों के मध्य एक औद्योगिक विवाद है;

और जबकि इस विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है एवं ऐसी प्रकृति का भी है कि इसमें एक राज्य से अधिक में स्थित भारतीय खाद्य निगम के प्रतिष्ठानों के इसमें रुचि रखने अथवा प्रभावित होने की संभावना है;

और जबकि केन्द्र सरकार का यह मत है कि उक्त विवाद का राष्ट्रीय अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए;

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कोलकाता में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-22012/304/2006-आइआर. (सी-II), दिनांक 18.03.2008 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री सी॰पी॰ मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया।

और जबकि न्यायमूर्ति श्री सी॰ पी॰ मिश्रा ने 02.04.2009 को उक्त राष्ट्रीय औद्योगिक अधिकरण का कार्यभार त्याग दिया।

और जबकि केन्द्रीय सरकार ने दिनांक 23.08.2011 के आदेश द्वारा राष्ट्रीय का पुनर्गठन किया और न्यायमूर्ति श्री माणिक मोहन सरकार को इसके पीठासीन अधिकारी नियुक्त किया।

और जबकि न्यायमूर्ति श्री माणिक और मोहन सरकार ने अपनी सेवानिवृत्ति पर उक्त राष्ट्रीय औद्योगिक अधिकरण का कार्यभार त्याग दिया।

अतः, अब, न्यायमूर्ति श्री दीपक साहा रे के इसके पीठासीन अधिकारी से युक्त कोलकाता में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट कर दिया कि न्यायमूर्ति श्री दीपक साह रे इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर इसे न्यायमूर्ति श्री माणिक मोहन सरकार द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे।

[सं॰ एल-22012/304/2006-आईआर(सी-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

ORDER

New Delhi, the 10th January, 2014

S.O. 335.—Whereas the Central Govt. is of the opinion that an industrial dispute exists between the employers in relation to the management of FCI and their workmen in respect to the schedule hereto annexed;

And whereas the dispute involves question of national importance and also is of such nature that the establishments of Food Corporation of India situated in more than one State are likely to be interested in, or affected;

And whereas the Central Government is of the opinion that the said disputes should be adjudicated by the National Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-22012/304/2006-IR(C-II) dated 18.03.2008 with headquarters at Kolkata and appointed Justice Shri C.P. Mishra as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication.

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009.

And whereas Central Government vide order dated 23.08.2011 reconstituted the National Tribunal and appointed Justice Shri Manik Mohan Sarkar as its Presiding Officer;

And whereas Justice Shri Manik Mohan Sarkar relinquished the charge of the said National Industrial Tribunal on his retirement;

Now, therefore, a National Industrial Tribunal is consituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Offcer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the stage at which it was left by Justice Shr Manik Mohan Sarkar and dispose of the same accordingly.

[No. L-22012/304/2006-IR(C-II)]
B.M. PATNAIK, Desk Officer

आदेश

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 336.—जबकि भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोक्ताओं और इस आदेश के साथ संलग्न अनुसूची के संबंध में उनके कर्मकारों के बीच एक औद्योगिक विवाद को आदेश संख्या एल-22011/180/2000-आईआर (सी-II) दिनांक 8.3.2001 द्वारा न्यायनिर्णयन हेतु केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय लखनऊ को निर्दिष्ट किया गया था।

और जबकि इलाहाबाद स्थित माननीय उच्च न्यायालय, लखनऊ पीठ ने रिट याचिका संख्या 4551/2005 ने सरकार को इस विवाद को अधिमानत: निर्णय की प्रमाणित प्रति प्राप्त होने की तारीख से तीन माह की अवधि के भीतर समुचित प्राधिकरण को निर्दिष्ट करने का निदेश दिया था।

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद को एक राष्ट्रीय औद्योगिक न्यायाधिकरण को निर्दिष्ट करना समीचीन होगा क्योंकि यह मामला उक्त प्रबंधन के एक से अधिक राज्य में अवस्थित प्रतिष्ठान से संबंधित है।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शाक्तियों का प्रयोग करते हुए कोलकाता में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-22011/180/2000 -आईआर (सी-II) दिनांक 15.11.2006 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमर्ति श्री सी॰पी॰ मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा 10 की उप धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया;

और जबकि न्यायमूर्ति श्री सी॰पी॰ मिश्रा ने उक्त राष्ट्रीय औद्योगिक अधिकरण का कार्यभार 02.04.2009 को त्याग दिया;

अत:, अब, न्यायमूर्ति श्री दीपक साहा रे के इसके पीठासीन अधिकारी से युक्त कोलकाता में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर यह प्रक्रियाधीन था और इसे तदनुसार निपटाएंगे।

[सं॰ एल-22011/180/2000-आईआर(सी-II)]
बी॰ एम॰ पटनायक डेस्क अधिकारी

ORDER

New Delhi, the 10th January, 2014

S.O. 336.—Whereas an Industrial Dispute between employees in relation to management of Food Corporation of India and their workmen in respect to the schedule hereto annexed was referred for adjudication to Central Government Industrial Tribunal-cum-Labour Court, Lucknow vide order No. L-22012/180/2000-IR(C-II) dated 8.03.2001.

And whereas the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench in W.P. No. 4551/2005 had directed the Government to refer the dispute before the appropriate authoirty preferably within a period of three months from the date of receipt of certified copy of the judgment.

And whereas the Central Govt. is of the opinion that it would be expedient to refer the said Industrial Dispute to a National Industrial Tribunal as the matter pertains to establishment of the said management located in more than one State.

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order L-22012/180/2000-IR(C-II) dated 15.11.2006 with headquarters at Kolkata and appointed Justice Shri C.P. Mishra as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009;

Now, therefore, a National Industrial Tribunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the stage at which it was under process and dispose of the same accordingly.

[No. L-22012/180/2000-IR(C-II)]
B.M. PATNAIK, Desk Officer

आदेश

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 337.—जबकि केन्द्रीय सरकार का यह मत है कि भारतीय खाद्य निगम के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद विद्यमान है;

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है और इसका न्याय-निर्णयन एक राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा किया जाना चाहिए;

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्रम मंत्रालय के दिनांक 17.12.2004 के आदेश संख्या एल. 22012/400/2003 आईआर(सी-II) द्वारा एक राष्ट्रीय न्यायाधिकरण गठित किया था जिसका मुख्यालय कोलकाता में था और न्यायमूर्ति श्री हृषिकेष बनर्जी को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था तथा उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्याय-निर्णयन हेतु उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को संदर्भित किया था;

और जबकि न्यायमूर्ति श्री हृषिकेश बनर्जी ने दिनांक 03.05.2006 को उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था;

और जबकि केन्द्रीय सरकार ने दिनांक 06.03.2007 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री सी॰पी॰ मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था;

और जबकि न्यायमूर्ति श्री सी॰पी॰ मिश्रा ने 02.04.2009 को उक्त राष्ट्रीय न्यायाधिकरण का कार्यभार छोड़ दिया था;

और जबकि केन्द्रीय सरकार ने दिनांक 14.06.2010 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री माणिक मोहन सरकार को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था;

और जबकि न्यायमूर्ति श्री माणिक मोहन सरकार ने अपनी सेवानिवृत्ति पर उक्त राष्ट्रीय न्यायाधिकरण का कार्यभार छोड़ दिया था;

अत: अब एक राष्ट्रीय औद्योगिक न्यायाधिकरण का गठन किया जाता है जिसका मुख्यालय कोलकाता में होगा तथा जिसके पीठासीन अधिकारी न्यायमूर्ति श्री दीपक साहा रे होंगे एवं उपर्युक्त विवाद को न्यायनिर्णयन के लिए उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को इस निदेश के साथ संदर्भित किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस अवस्था से आगे कार्यवाही करेंगे जहां पर इसे न्यायमूर्ति श्री माणिक मोहन सरकार ने छोड़ा था और तदनुसार उसका निपटान करेंगे।

[सं॰ एल-22012/400/2003-आईआर(सी-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

ORDER

New Delhi, the 10th January, 2014

S.O. 337.—Whereas the Central Government is of the opinion that an industrial dispute existed between the management of FCI and their workmen.

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-22012/400/2003-IR(C-II) dated 17.12.2004 with headquarters at Kolkata and appointed Justice Shri Hrishikesh Benerji as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri Hrishikesh Benerji relinquished the charge of the said National Industrial Tribunal on 03.05.2006;

And whereas Central Government vide order dated 06.03.2007 reconstituted the National Tribunal and appointed Justice Shri C.P. Mishra as its Presiding Officer;

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009;

And whereas Central Government vide order dated 14.06.2010 reconstituted the National Tribunal and appointed Justice Shri Manik Mohan Sarkar as its Presiding Officer;

And whereas Justice Shri Manik Mohan Sarkar relinquished the charge of the said National Industrial Tribunal on his retirement;

Now, therefore, a National Industrial Trinunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the mater from the stage at which it was left by Justice Shri Manik Mohan Sarkar and dispose of the same accordingly.

[No. L-22012/400/2003-IR(C-II)]
B.M. PATNAIK, Desk Officer

आदेश

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 338.—जबकि केन्द्रीय सरकार का यह मत है कि भारतीय खाद्य निगम के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद विद्यमान है;

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है और इसका न्याय-निर्णयन एक राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा किया जाना चाहिए;

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्रम मंत्रालय के दिनांक 24.12.2004 के आदेश संख्या एल-22012/11/2004-आईआर (सी-II) द्वारा एक राष्ट्रीय न्यायाधिकरण गठित किया था जिसका मुख्यालय कोलकाता में था और न्यायमूर्ति श्री हृषिकेष बनर्जी को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था तथा उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्याय-निर्णयन हेतु उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को संदर्भित किया था;

और जबकि न्यायमूर्ति श्री हृषिकेश बनर्जी ने दिनांक 03.05.2006 को उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था;

और जबकि केन्द्रीय सरकार ने दिनांक 06.03.2007 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री सी॰पी॰ मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री सी॰पी॰ मिश्रा ने दिनांक 02.04.2009 को उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था;

और जबकि केन्द्रीय सरकार ने दिनांक 14.06.2010 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री माणिक मोहन सरकार को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री माणिक मोहन सरकार ने अपनी सेवानिवृत्ति पर उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था;

अतः अब एक राष्ट्रीय औद्योगिक न्यायाधिकरण का गठन किया जाता है जिसका मुख्यालय कोलकाता में होगा तथा जिसके पीठासीन अधिकारी न्यायमूर्ति श्री दीपक साहा रे होंगे एवं उपर्युक्त विवाद को न्यायनिर्णयन के लिए उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को इस निदेश के साथ संदर्भित किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस अवस्था से आगे कार्यवाही करेंगे जहां पर इसे न्यायमूर्ति श्री माणिक मोहन सरकार ने छोड़ा था और तदनुसार उसका निपटान करेंगे।

[सं॰ एल-22012/11/2004-आईआर (सी-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

ORDER

New Delhi, the 10th January, 2014

S.O. 338.—Whereas the Central Government is of the opinion that an industrial dispute existed between the management of FCI and their workmen.

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal *vide* Ministry of Labour Order No. L-22012/11/2004-IR(C-II) dated 24.12.2004 with headquarters at Kolkata and appointed Justice Shri Hrishikesh Banerji as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri Hrishikesh Banerji relinquished the charge of the said National Industrial Tribunal on 03.05.2006;

And whereas Central Government *vide* order dated 06.03.2007 reconstituted the National Industrial Tribunal and appointed Justice Shri C.P. Mishra as its Presiding Officer;

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009;

And whereas Central Government *vide* order dated 14.06.2010 reconstituted the National Tribunal and appointed Justice Shri Manik Mohan Sarkar as its Presiding Officer;

And whereas Justice Shri Manik Mohan Sarkar relinquished the charge of the said National Industrial Tribunal on his retirement;

Now, therefore, a National Industrial Tribunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the

stage at which it was left by Justice Shri Manik Mohan Sarkar and dispose of the same accordingly.

[No. L-22012/11/2004-IR (C-II)]
B.M. PATNAIK, Desk Officer

आदेश

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 339.—जबकि केन्द्रीय सरकार का यह मत है कि भारतीय खाद्य निगम के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद विद्यमान है;

और जबकि केन्द्रीय सरकार का यह मत है कि उक्त विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है और इसका न्याय-निर्णयन एक राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा किया जाना चाहिए;

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्रम मंत्रालय के दिनांक 15.12.1998 के आदेश संख्या एल-22012/439/1995-आईआर (सी-II) द्वारा एक राष्ट्रीय न्यायाधिकरण गठित किया था जिसका मुख्यालय कोलकाता में था और न्यायमूर्ति श्री ए॰के॰ चक्रबर्ती को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था तथा उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्याय-निर्णयन हेतु उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को संदर्भित किया था;

और जबकि न्यायमूर्ति श्री ए॰के॰ चक्रबर्ती ने दिनांक 31.12.1999 को उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था।

और जबकि केन्द्रीय सरकार ने दिनांक 14.03.2002 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री बी॰पी॰ शर्मा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री बी॰पी॰ शर्मा ने उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार 23.1.2003 को छोड़ दिया था।

और जबकि केन्द्रीय सरकार ने दिनांक 28.1.2004 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री हृषिकेष बनर्जी को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री हृषिकेष बनर्जी ने दिनांक 03.05.2006 को उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था।

और जबकि केन्द्रीय सरकार ने दिनांक 06.03.2007 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री सी॰पी॰ मिश्रा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री सी॰पी॰ मिश्रा ने दिनांक 02.04.2009 को उक्त राष्ट्रीय न्यायाधिकरण का कार्यभार छोड़ दिया था।

और जबकि केन्द्रीय सरकार ने दिनांक 14.06.2010 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया था तथा न्यायमूर्ति श्री माणिक मोहन सरकार को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था।

और जबकि न्यायमूर्ति श्री माणिक मोहन सरकार ने अपनी सेवानिवृत्ति पर उक्त राष्ट्रीय न्यायाधिकरण का कार्यभार छोड़ दिया था।

अत: अब एक राष्ट्रीय औद्योगिक न्यायाधिकरण का गठन किया जाता है जिसका मुख्यालय कोलकाता में होगा तथा जिसके पीठासीन अधिकारी न्यायमूर्ति श्री दीपक साहा रे होंगे एवं उपर्युक्त विवाद को न्यायनिर्णयन के लिए उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को इस निदेश के साथ संदर्भित किया जाता है कि न्यायमूर्ति श्री दीपक साहा रे इस मामले में उस अवस्था से आगे कार्यवाही करेंगे जहां पर इसे न्यायमूर्ति श्री माणिक मोहन सरकार ने छोड़ा था और तदनुसार उसका निपटान करेंगे।

[सं॰ एल-22012/439/1995-आईआर (सी-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

ORDER

New Delhi, the 10th January, 2014

S.O. 339.—Whereas the Central Government is of the opinion that an industrial dispute existed between the management of FCI and their workmen.

And whereas the Central Government is of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal *vide* Ministry of Labour Order No. L-22012/439/1995-IR(C-II) dated 15.12.1998 with headquarters at Kolkata and appointed Justice Shri A.K. Chakraborty as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas Justice Shri A.K. Chakraborty relinquished charge of the above National Industrial Tribunal on 31.12.1999;

And whereas Central Government *vide* order dated 14.3.2002 reconstituted the National Industrial Tribunal and appointed Justice Shri B.P. Sharma as its Presiding Officer;

And whereas Justice Shri B.P. Sharma relinquished the charge of the said National Industrial Tribunal on 23.1.2003;

And whereas Central Government *vide* order dated 28.1.2004 reconstituted the National Tribunal and

appointed Justice Shri Hrishikesh Banerji as its Presiding Officer;

And whereas Justice Shri Hrishikesh Banerji relinquished the charge of the said National Industrial Tribunal on 03.05.2006;

And whereas Central Government *vide* order dated 06.03.2007 reconstituted the National Tribunal and appointed Justice Shri C.P. Mishra as its Presiding Officer;

And whereas Justice Shri C.P. Mishra relinquished the charge of the said National Industrial Tribunal on 02.04.2009;

And whereas Central Government *vide* order dated 14.06.2010 reconstituted the National Tribunal and appointed Justice Shri Manik Mohan Sarkar as its Presiding Officer;

And whereas Justice Shri Manik Mohan Sarkar relinquished the charge of the said National Industrial Tribunal on his retirement;

Now therefore, a National Industrial Tribunal is constituted with Headquarters at Kolkata with Justice Shri Dipak Saha Ray as its Presiding Officer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Dipak Saha Ray shall proceed in the matter from the stage at which it was left by Justice Shri Manik Mohan Sarkar and dispose of the same accordingly.

[No. L-22012/439/1995-IR (C-II)]
B.M. PATNAIK, Desk Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 340.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (07/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/54/2010-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 07/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 10/01/2014.

[No. L-12011/54/2010-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/07/2011 Date: 02.12.2013

Party No. 1 : The Asstt. General Manager, Bank of Maharashtra, Chandrapur Region, Opp. Police Mukhayalaya, Mul Road, Distt. Chandrapur.

Party No. 2 : The General Secretary, Union of the Maharashtra Bank Employees, 542, Congress Nagar, Nagpur-12.

AWARD

(Dated: 2nd December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra, Chandrapur Region and their workman, Shri K.V. Randive, for adjudication, as per letter No. L-12011/54/2010-IR (B-II) dated 04.05.2011, with the following schedule:—

> "Whether the action of the management of Bank of Maharashtra, Chandrapur Region in denying back wags to Shri K.V. Randive for illegal termination for the period from 28.06.2002 to 05.02.2009 is legal & justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union of Maharashtra Bank Employees ("the union" in short) on behalf of the workman, Shri K.V. Randive, ("the workman" in short), filed the statement of claim and the management of Bank of Maharashtra, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that it (union) is a registered trade union under the Trade Unions Act and the workman is a member of the union and Party No. 1 is a nationalized Bank and is therefore an industry and the workman belongs to "Mana" community, which is recognized as Scheduled Tribe and he was holding the Caste Certificate issued by the Competent Authority and the workman on the basis of his Caste Certificate applied for the post of clerk, in response to the advertisement released by the Banking Service Recruitment Board and after appearing in the written examination as well as personal interview conducted by the Banking Service Recruitment Board, the workman was selected against the reserved post of clerk for Scheduled Tribe and was appointed as such by

the Party No. 1 w.e.f. 03.12.1976 at its Bramhapuri Branch and the services of the workman came to be confirmed by Party No. 1 after successful completion of probationary period and he came to be elevated to the post of special Assistant and surprisingly, after completion of more than 20 years of service by the workman, the Party No. 1 unnecessarily conducted exercise of verification of his caste certificate, which was in its (Party No. 1's) possession, right from the year 1976 and on the basis of unreasonable, unjustified and illegal interpretation about the case of the workman, presumed for itself that the workman had submitted false certificate about his belonging to scheduled tribe and initiated disciplinary action against the workman and the Enquiry Officer appointed for the purpose of departmental enquiry, without due application of mind, hastily declared the charge against the workman as proved and the Disciplinary Authority *vide* order dated 26.06.2000, awarded the punishment of compulsory retirement from the services upon the workman and consequently, the workman came to be retired from services w.e.f. 28.06.2002 from Mul Branch of the Bank, at the age of about 50 years and the appeal preferred by the workman was dismissed by the Appellate Authority without application of judicious mind by order dated 30.11.2002.

The further case of the workman as presented by the union is that the decision of the Caste Scrutiny Committee to the effect that Mana Caste does not belong to Scheduled Tribe was challenged by the workman before the Hon'ble High Court by way of a Writ Petition, but the same was dismissed by the Hon'ble High Court Court and the workman carried the said Writ Petition before the Hon'ble Apex Court in Civil Appeal No. 8191/2001 and the Hon'ble Apex Court by order dated 16.01.2008 held that "Mana" community comes under Scheduled Tribe and as per the direction of the Hon'ble Apex Court, the workman approached the Caste Scrutiny Committee for revalidation of the Caste Certificate issued to him earlier, in the light of the directions given by the Hon'ble Apex Court and the Caste Scrutiny Committee reconsidered its own earlier decision and declared Mana community as Scheduled Tribe and necessary Caste Certificate to the said effect was also given to the workman by the Caste Scrutiny Committee on 08.05.2008 and in the midst of the above events pertaining to the caste of the workman, disciplinary action came to be initiated by the Party No. 1 on the unfounded and incorrect premise that there was suppression of caste at the time of employment of the workman and consequently, punishment of compulsory retirement came to be imposed upon the workman vide final order dated 26.06.2002 and the order of punishment came to be challenged by the workman before the Hon'ble High Court, Nagpur Bench by way of Writ Petition No. 2020/2003 and the said Writ Petition was disposed of by the Hon'ble High Court vide order dated 01.04.2004 with specific directions that in the event that the appeal filed by the petitioner (workman) is allowed by the Hon'ble Apex Court and his tribe claim is upheld, it would be open to the petitioner (unless any other directions are issued by the Hon'ble Apex Court) to make a representation to the respondent Bank for consequential appropriate orders and in the events that the workman is still aggrieved by any directions that would be arrived at by the Bank consequent upon the disposal of the appeal by the Hon'ble Supreme Court, it would be open to the petitioner to adopt such proceedings if any, as are open in law and in view of the order passed by the Hon'ble High Court and the decision of the caste Scrutiny as per the direction of the Hon'ble Supreme Court, the workman represented the Party No. 1 vide his representation dated 11.05.2008 demanding his reinstatement in the services with full back wages, but Party No. 1 did nothing for a period of two months, therefore, the workman again approached Party No. 1 vide his reminder dated 30.07.2008 and after lapse of more than 7 months, the Party No. 1 came out with the order dated 20.11.2008 reinstating the workman on the same post at its Bramhapuri Branch and many unreasonable, uncalled for, unnecessary and unjustified stipulations came to be made by the Party No. 1 in the said communication and being aggrieved by the said whimsical action of Party No. 1, the workman made another representation by way of notice dated 04.12.2008 and he reported for duties at Bramhapuri Branch and submitted a joining report to the Branch Manager on 03.12.2008, but he was not allowed to join duties and despite of the notice of the workman, Party No. 1 preferred not to lend its ears to his grievances and practically and unreasonably sat tight in the matter, so the workman moved the Hon'ble High Court, Nagpur Bench by way of Writ Petition No. 525/2009 on 22.01.2009 and after filing of the Writ Petition, the Party No. 1 came out with a communication dated 28.01.2009, by which almost all the demands attached and incidental to reinstatement in the services were agreed, but an unreasonable condition was imposed that he would not be entitled to any back wages for the period he was out of service and in the manner in which, he was dragged out of service for a period of six years and as Party No. 1 was reluctant in allowing him to join duties for his remaining period of less than two years, he was compelled to give letter of acceptance on 06.02.2009 and only thereafter, he was allowed to join duties and the said letter was given by him because of the undue pressure and intimidation made by the Party No. 1 and as all the prayers made in Writ Petition 525/2009 filed by the workman except the issue of back wages were resolved, an amendment to the petition was made and since alternate remedy under the Act for back wages was available, the writ Petition was withdrawn by the workman with the leave of the Hon'ble High Court.

It is further pleaded by the union on behalf of the workman that the disciplinary action for which punishment of compulsory retirement was imposed against the workman was based on incorrect and unfounded premise and

unreasonable exercise was conducted by the Party No. 1 about the caste of the workman and that too after more than a period of 20 years and after making a farce of departmental enquiry, the Party No. 1 compulsorily retired the workman, 9 years ahead of his age superannuation and thereby virtually and illegally thrown the workman on the street and since the workman was not gainfully employed after his termination, he is legally entitled to receive full back wages, once the Party No. 1 took the decision for his reinstatement in the services and there was therefore, no logic much less any reason not to pay the back wages to the workman.

Prayer has been made by the union to direct the Party No. 1 to pay the wages to the workman for the period from 28.06.2002 to 05.02.2009.

3. The Party No. 1 in the written statement, denying all the adverse allegations made in the statement of claim has pleaded *inter-alia* that the statement of claim has been filed by the union, but the union has not filed any document showing its registration and the workman to be its member and that it was authorized by the workman to espouse the claim, the reference is liable to be rejected.

It is further pleaded by the Party No. 1 that the workman joined its services as a clerk, being a Schedule Tribe candidate belonging to "Mana" community under the reserved quota for S.T. candidate and on 01.11.1993, it had asked the workman to give informations in the prescribed format, for onward submission of the same to the committee, for scrutiny and verification of his claim that "Mana" community comes under Schedule Tribe, but the workman did not submit such information, so on 20.01.1994, the workman was again asked to submit the informations, but still then, the workman failed to supply the informations, so it referred the case of the workman to the committee for scrutiny and verification of his tribe claim, vide letters dated 28.01.1994, 07.08.1997 and 03.10.1997, as per the guide line issued by the Government of India and the committee after giving the workman personal hearing on 28.04.2000 and after due verification of all the documents produced by him, invalidated the caste claim of the workman and as the Caste Scrutiny Committee cancelled the Caste Certificate of the workman, as per the guide lines issued by the Government of India, the disciplinary action was initiated by it against the workman for the charge of "knowingly submitting a false document in connection with his appointment", which was an act of gross misconduct under clause 19.5 (m) of the Bipartite Settlement and after conducting a full fledged enquiry, the workman was found guilty of the misconduct and punishment of compulsory retirement from services of the Bank was imposed on him with superannuation benefits, vide order dated 26.06.2002.

Party No. 1 in the written statement has admitted about the workman filing an appeal against the order of punishment before the Appellate Authority and rejection of the said appeal on 30.11.2002, filing of Writ Petition No. 2283/2000 before the Hon'ble High Court, Nagpur Bench for redress, dismissal of the said Writ Petition by the Hon'ble High Court by order dated 18.08.2000, filing of SLP No. 16841/2000 before the Hon'ble Supreme Court, filing of Writ Petition W.P. No. 2020/2003 before the Hon'ble High Court, Nagpur Bench by the workman against the order of rejection of his application for voluntary retirement under the VRS scheme, 2000 and the order of compulsory retirement and the Hon'ble High Court passing the order in the said Writ Petition that, "In these circumstances the appropriate order that should be passed in this proceedings is that in the event that the appeal filed by the petitioner before Supreme Court is allowed and the Tribe claim of the petitioner is upheld, it would be open to the petitioner (unless any other directions are issued by the Supreme Court) to make a representation to the respondent Bank for consequential appropriate orders. Since the Court is informed that Bank is Party to the proceedings before the Supreme Court, the Bank as indeed other parties shall be bound by the directions of the Supreme Court. In the event, petitioner is still aggrieved by any decision that would be arrived at by the Bank consequent upon the disposal of the appeal by the Supreme Court, it would be open to the petitioner to adopt such proceedings if any, as are open in law. The petition is accordingly disposed of."

In the written statement, it is also admitted by the Party No. 1 that the Hon'ble Apex Court allowed the appeal filed by the workman by order 16.01.2008 and it was concluded by the Hon'ble Apex Court that "Mana" community comes under Schedule Tribe and that the Hon'ble Apex Court set aside the order of the High Court and on the basis of the direction of the Hon'ble Apex Court, the Caste Scrutiny Committee revalidated the Caste Certificate of the workman on 08.05.2008, after hearing both the parties and that the workman made representations vide his letters dated 11.05.2008 and 04.12.2008 for his reinstatement in the services of the Bank with full back back wages.

However, it is pleaded by the Party No. 1 that by letter dated 28.01.2009, it showed its readiness to reinstate the workman in service, subject to certain reasonable and justifiable conditions and there was no compulsion or pressure from the Bank and the joining report submitted by the workman on 06.02.2009 was voluntary and it had nothing to do with the filing and withdrawal of Writ Petition No. 525/2009 and its action in imposing the punishment of compulsory retirement on the workman was just and proper and in accordance with law and as such, the workman is not entitled to any back wages and after the order of reinstatement, the workman joined in service, accepting the conditions put by the Bank management, which were according to the Rules and also legal, proper and justified and as the workman was not in employment of the Bank

from 28.06.2002 to 05.02.2009, he is not entitled to any back wages for the said period.

4. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claim.

The union has examind the workman as a witness. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has stated that he was appointed in the Bank as a member of S.T. category and though he had submitted his Caste Certificate, he had not submitted his caste validity certificate and vide letter dated 01.01.1993, the Bank had asked him to submit his caste validity certificate and in 1994, while he was working in Aheri Branch, Bank had asked him to produce the caste validity certificate and he did not produce the same, as he was not in possession of the same and then Bank sent the informations submitted by him regarding his belonging to S.T. category to the Caste Scrutiny Committee and the said Committee cancelled his Caste Certificate holding the same to be invalid and in view of the order of the Caste Scrutiny Committee, the Bank initiated the departmental enquiry and after the enquiry, imposed the punishment of compulsory retirement, as per order dated 26.06.2002 and he did not work in the Bank from 28.06.2002 to 05.02.2009.

5. Besides the workman, the union has examined one Shri Shyam V. Hudaar as the other witness.

6. Shri Chittaranjan Bhuradas Chaure, the Branch Manager of Brahmapuri branch of party No. 1 has been examined as a witness on behalf of Party No. 1. The witness for the Party No. 1 has reiterated the facts mentioned in the written statement, in his examination-in-chief on affidavit.

In his cross-examination, witness for the Party No. 1 has admitted that the workman was selected and appointed in the Bank on the basis of the Schedule Tribe Certificate submitted by him and after number of years of service, the workman was given the post of Special Assistant.

7. At the time of argument, it was submitted by the learned advocate for the workman that after a lapse about 20 years of entering of the workman into services of the Party No. 1, the Party No. 1 referred the Caste Certificate of the workman to the Caste Scrutiny Committee, and the said committee erroneously declared the said Caste Certificate as invalid and ultimately, the Hon'ble Apex Court in Civil Appeal No. 8191/2001 came to the conclusion that "Mana" community to which the workman belongs comes under Schedule Tribe and the Hon'ble Apex Court were pleased to set aside the order of the Caste Scrutiny Committee and the Hon'ble High Court and as per the direction of the Hon'ble Apex Court, the Caste Scrutiny Committee revalidated the Caste Certificate of the workman. It was further submitted by the learned advocate for the workman that without waiting for the finality of the case pending in the Court, the Party No. 1 initiated the disciplinary action leveling charge under chaluse 19.5 (m) of the Bi-partite settlement on the allegation of submitting false document in connection with his appointment and by order dated 26.06.2002, the punishment of compulsory retirement w.e.f. 28.06.2002 was imposed against the workman and as far no fault of the workman, the departmental action was initiated against him and the entire action of Party No. 1 in imposing the punishment of compulsory retirement is due to patent wrong and the illegal decision taken by the Bank and as the workman was reinstated in service, the condition of non-payment of back wages for the period of 28.06.2002 to 05.02.2009 was ab-initio illegal and unjustified and as the workman was not gainfully employed during the relevant period, he is entitle for back wages for the period from 28.06.2002 to 05.02.2009.

8. Per contra, it was submitted by the learned advocate for the Party No. 1 that the appointment of the workman as a clerk in the Bank was as a Schedule Tribe candidate and by letters dated 01.01.1993 and 21.01.1994, the Bank directed the workman to submit the informations in the prescribed format for onward submission of the same to the caste scrutiny committee, but the workman failed to submit such informations, so the Bank referred the case of the workman vide letters 28.01.1994, 07.08.1995 and 03.10.1997 to the caste scrutiny committee for verification of the claim of the workman, as per the guide lines issued by the Government of India and after verification, the said committee invalidated the Caste Certificate of the workman and in view of the cancellation of the Caste Certificate of the workman, Party No. 1 initiated the disciplinary proceeding against the workman for submission of false document for employment and after due enquiry, the punishment of compulsory retirement was imposed against the workman on 26.06.2002 and as per the direction of the Hon'ble Apex Court in SLP 16841/2000, the Caste Scrutiny Committee revalidated the Caste Certificate of the workman on 08.05.2008 and in view of the direction of the Hon'ble High Court in W.P. No. 2020/2003, the Party No. 1 issued the communication dated 28.01.2009 to continuation to its earlier communication dated 20.11.2008, to the workman for his reinstatement in service with the some conditions including that he would not be entitled to back wages for the period for which he was out of service and he has to give an unconditional acceptance of all the terms and conditions before joining and the workman gave an undertaking on 06.02.2009 accepting the terms and conditons as laid down in communication dated 28.01.2009 and joined in service and as the workman was not in employment of the Bank from 28.06.2002 to 05.02.2009 and in view of the specific agreement between the Bank and the workman, the workman is not entitled to any back wages.

In support of the submission, the learned advocate for the Party No. 1 placed reliance on the decision in the case of State of U.P. Vs Madhav Prasad Sharma (Appeal 2009) and the Ruling of the Hon'ble Apex Court.

9. Before delving into the merit of the case, I think it proper to mention about the decisions cited by the learned advocate for the Party No. 1. The first decision (in the case of State of U.P. Vs. Madhav Prasad Sharma) is regarding the effect regularization of unauthorized absence from duty treating the period of absence as leave without pay in a departmental enquiry conducted against a delinquent employee for the misconduct of unauthorized absence.

Likewise, the Ruling of the Hon'ble Apex Court (Even though the learned advocate for the Party No. 1 has not filed the full text of the judgment and has also not mentioned the case number or name of the parties or the name of the journal in which the decision was reported) is that an employee who has remained absent from duty for a long time in an unauthorized manner is not entitled to any back wages and the principle of "no work no pay" comes into play.

However, the case in hand is not at all a case of unauthorized absence of the workman or imposition of punishment against the workman for the misconduct of remaining unauthorized absence. Hence, with respect, I am of the opinion that the decision and Ruling cited by the learned advocate for the Party No. 1 have no application to the case in hand.

10. In this case, on perusal of the pleadings of the parties and the evidence on record, it is found that all most all the facts are admitted by the parties. According to the workman, the condition imposed by the Party No. 1 regarding his disentitlement for back wages is quite illegal and unjustified in as much as the entire action taken by Party No. 1 in terminating his services by way of compulsory retirement was due to patent wrong and illegal decision taken by Party No. 1 and there was no possibility of Party No. 1 taking him back in service without his furnishing the undertaking and as the condition was imposed by Party No. 1 in the order of reinstatement itself, the acceptance of the said condition by him was under compulsion and as the departmental enquiry was conducted not due to his fault and in view of the order of the Hon'ble Apex Court, his Caste Certificate was revalidated and he was re-instated in service, he is entitled for back wages.

According to the Party No. 1, as per communication dated 28.01.2009, the workman was intimated about his reinstatement in service with some conditions including the condition that he would not be entitled for back wages for the period for which, he was out of service and the workman was also asked to give an unconditional undertaking to abide by the conditions before his joining the service again and accordingly, the workman submitted the undertaking at the time of his rejoining service and as the workman was not in service from 28.06.2002 to 05.02.2009, the workman is not entitled to any relief.

11. As already stated above, the workman was reinstated in service by Party No. 1 after revalidation of his Caste Certificate as per the direction of the Hon'ble Apex Court and the workman joined the service of Party No. 1 on 06.02.2009. In view of the reinstatement of the workman in service by Party No. 1, the logical conclusion is that the punishment of compulsory retirement imposed against the workman did not remain in existence and for that the workman became entitled for back wages also. So, the condition imposed by Party No. 1 that the workman was not entitled for back wages was not justified. In view of the conditions imposed by Party No. 1 for the reinstatement of the workman, the workman was bound to give the undertaking.

The workman in the statement of claim has pleaded that after his compulsory retirement from services, he was not gainfully employed. In his evidence on affidavit also, the workman has stated that he was not gainfully employed after termination of his services by way of compulsory retirement. Such evidence of the workman has not been challenged in the cross-examination.

In view of the materials on record and the discussions made above, it is found that the workman is entitled for full back wages for the period from 28.06.2002 to 05.02.2009. Hence, it is ordered:—

ORDER

The workman is entitled for full back wages for the period from 28.06.2002 to 05.02.2009. The Party No. 1 is directed to pay the back wages for the said period to the workman within a month of publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ के पंचाट (147/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/209/2003-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 147/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial

Dispute between the management of Punjab National Bank and their workman, received by the Central Government on 10/01/2014.

[No. L-12012/209/2003-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDERA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 147/2004

Shri Surinder Kumar S/o Sh. Pritam Chand, near Govt. Hospital Village Lahra, P.O. Galore, Tehsil Nadaun, Distt. Hamirpur (HP)-177026. (Died during proceedings, substituted by Legal Representatives Mrs. Neena Khawla (wife), Abhirnta Khawla (doughter) and Sajal Khawla (son).

...Applicant

Versus

1. The Regional Manager, Punjab National Bank, Regional Office Hamirpur.

....Respondents/Employer

APPEARANCES:

For the workman: Shri Kuldeep Bhatia (Advocate)

For the management: Shri N.K. Zakhmi (Advocate)

AWARD

(Passed on:—05-12-2013)

Central Govt. *vide* notification No. L-12012/209/2003-IR(B-II) Govt. of India, Ministry of Labour, New Delhi, dated 08.03.2004 has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Punjab National Bank, Hamirpur (HP) in dismissing Sh. Surinder Kumar, Ex-Clerk-cum-Cashier from the Bank's services *w.e.f.* 01.07.2002 is just and legal? If not, what relief the workman is entitled to?"

2. On receipt of the reference notices were issued to the parties. Workman filed claim statement in which he pleaded that he was working as Clerk-cum-Cashier at Punjab National Bank Galore Branch and his work and conduct was satisfactory. But in spite of his good record he was placed under suspension on 11.11.1999 on account of alleged fraud. He was issued charge sheet dated 12.6.2001 after more than 18 months of the alleged fraud fabricating the case against the workman, and enquiry was conducted in slip short manner and no action was taken against the other staff including the Branch Manager. An FIR was also lodged against the workman on the same set of facts and the workman was put on trial before the Additional Chief Judicial Magistrate, Barsar District Hamirpur (H.P.), who acquitted the workman on 28.6.2003, but the management still continued with the departmental enquiry. The workman was not allowed to examine certain accounts and documents in the disguise of initiation of the departmental enquiry. The workman was also not allowed to be defended by the representative of the Union and curtailed the right of the employee by holding the departmental proceedings hastily. Workman was not allowed to defend himself during the enquiry properly and documents were not supplied and enquiry was adjourned to next date without offering him the opportunity of defence. Workman's request for recalling the management witness Sh. H.S. Lamba also declined by the enquiry officer. It is further alleged by the workman that enquiry was not conducted as per set procedure and the workman was not allowed proper opportunity of defence and the alleged misconduct does not fall within the provisions of misconduct, in view of provisions of Sastry Awards/Bipartite settlements. It is also alleged by the workman that his appeal against the order of the disciplinary authority was not given due consideration and dismissed on 22.10.2002. The orders of disciplinary and appellant authority are not speaking orders and are unjust, unlawful and illegal and without applying their minds. It is further submitted by the workman that no financial loss was suffered by the Bank from any of the alleged instances. More over the workman was also acquitted by the criminal court on the same set of facts. It is further submitted by the workman that the punishment awarded to the workman is quite harsh, illegal, unlawful, discriminatory and disproportionate to the alleged misconduct and the workman is liable to be reinstated in service with full back wages and other consequential benefit of service.

3. In written statement the management has taken primary objection that the claim of the workman was not maintainable as the workman himself admitted his guilt/ misconduct in his admission and confession. It is further submitted by the management that the action against the workman was taken in terms of provisions of Chapter 19 of the Bipartite Settlement and proper opportunity of defence was provided to the employee during the departmental proceeding which was conducted fairs & properly. It is specifically prayed by the management that issue of fairness and justness of the enquiry may be decided first. On merits it was denied by the management that workman has rendered good services. He was issued charge sheet which is so follows:—

> I. While crediting the DICGC Guarantee Fee Refund in October, 1997 refund of upfront fee on 12.11.1998, Interest subsidy received from DRDA on 18.02.1999 & 20.08.1999, misappropriation was made by not crediting in

eligible accounts. The details of these accounts were advised *vide* annexure A, B & C to the charge sheet.

II. It has been also detected that wherever subsidy/refund etc. were credited in the correct accounts that has been inflated or deflated to make it in the round figures. The comparison of these accounts pass books (wherever available) with ledger reveals that the same was adjusted by you against cash/installments tendered by the borrowers. Case was covered under Annexure D to the Charge Sheet.

III. Comparison of loan passbooks with ledgers reveals that you use to inflate the amount of interest in the pass book of loanees and at the time of receipt of installments. You have credited the pass book with the exact amount of cash tendered by the borrower (to you at the loan seat) but later on the amount send to Cashier was reduced by that inflated amount (interest). The details of these accounts were covered under Annexure D to the Charge Sheet.

IV. You use to inflate the balances of Demand Loan either by passing the voucher of interest of lesser amount than that posted in the ledger or inflated the balance by extracting the balance after levy of interest at the time of adjusting of account. In some cases at the time of closure/ adjusting of accounts you have altered the interest levied of previous quarter and summated the accounts under your own initials, thus, inflated the balances & got them adjusted with higher amounts thus leaving credit in the ledger. The details of such accounts was covered under Annexure E to the Charge Sheet.

V. The excess credit available in the ledger was adjusted by you by crediting fictitious credit entries in your own demand loan account & some other account. The details were covered Annexure F to the Charge Sheet.

VI. All the entries in the pass-books/ledgers have been in your own handwriting.

VII. Two of the borrowers namely Barfi Devi and Garib Dass have tendered the money to you for depositing in their loan accounts. Receipts for the same were also issued by you but these were not deposited in the Bank. The details of such cases/instances were covered under Annexure G to the Charge Sheet.

VIII. For some of the fraudulent entries you have given confession letters, which formed annexure I to J to the Charge Sheet.

4. It is stated by the management that FIR was lodged against the workman but not on the same set of facts. It is denied that the workman was not allowed to examine certain document and record. It is also denied by the management that any prejudice has been caused to the workman. The enquiry was conducted in fair and proper manner and there is no violation of clause 19.12 of bipartite settlement. The appeal of the workman was also dismissed *vide* order dated 22.10.2002. The penalty imposed upon the workman is quite legal lawful and proportionate and the workman is not entitled to any relief.

5. The workman also placed on record the criminal case judgement passed by Additional CJM Barsar, District Hamirpur.

6. The management also placed on record affidavit of one J.S. Jaswal who has also filed documents which contains enquiry proceedings. The management also placed on record the final conclusion arrived at by the enquiry officer. The management also placed on record affidavit of Y.K. Chauhan. The workman also placed on record the judgment in Civil Suit No. 712/2003, Punjab National Bank vs. Surender Kumar where by the suit filed by the management of the Bank against the workman was dismissed.

7. During the course of the proceedings the workman Surinder Kumar expired and his LR's Neena Khawla (wife) age 38 years, Abhirnta Khawla (daughter) age 13 years old, Sajal Khawla (son)age 9 years, were brought on record as LRs of the deceased workman.

8. On behalf of the workman, written argument also placed on record & learned counsel for the workman also made submission in oral arguments.

9. The learned counsel for the workman submitted that the workman was served with the charge sheet containing 8 charges after one & half year of the alleged incident which is after thought of the management and the enquiry was also conducted hastily and the workman was not allowed to lead defence properly and the workman's letter written to Shri H.S. Lamba about the incident and he never admitted the charges before Mr. H.S. Lamba who dishonstely shown this letter as confession letter and the workman was proceeded against on the basis of this alleged confession. During enquiry the workman was not allowed to examine certain record and document which caused great prejudice to the workman. Major penalty of dismissal was awarded to the workman without notice which is against the settled principal of law. The workman never admitted the charges. Besides this, he was acquitted by the additional chief Judicial Magistrate in criminal case on 28.6.2003 and in view of above he should have been let off

from the disciplinary proceedings. Document of the management which are alleged to be confessions of the workman Ex. M244 and 245 have not been proved by any witness of the management.

10. It is further submitted by the learned counsel for the workman that punishment awarded to the workman is disproportionate to the charged as workman was not involved in any offence which constituted moral turpitude. Management has not taken any disciplinary action against the other officials who are also part and parcel of these transactions. It is further submitted that departmental enquiry was not conducted as per provisions of chapter 19 of the Bipartite Settlement dated 19.10.1966 and charge sheet was served upon the workman by concocting false case and by fabricating false evidence. The punishment is shockingly disproportionate. It is prayed by the learned counsel for the workman that the order of punishment may be set aside and the legal heirs of the deceased workman may be granted back wages and other benefits from the date of dismissal. His one legal heir may be provided with bank service.

11. In the rebuttal the learned counsel for the management during arguments submitted that the workman has confessed to his guilt in the letters Ex. M244 and M25 and during the enquiry proceedings also he made confession and once the workman confess to his guilt he cannot claim that enquiry was not held fairly and properly. Enquiry was held following the principles of natural justice. The workman is not entitled to relief. It is further submitted by the learned counsel that acquittal in criminal case does not entitle the workman for reinstatement as he was held guilty in domestic enquiry. The workman was provided full opportunity to defend himself during enquiry and the enquiry was conducted in accordance with the principle of natural justice. He was allowed copies of each and every document which he demanded. He was also given personal hearing by the disciplinary authority as well as by the appellant authority. The punishment awarded to the workman is not disproportionate and in such situations where the workman has committed fraud as admitted by him, the punishment of dismissal is only suitable punishment for such kind of fraud and misconduct. Therefore the workman is not entitled to any relief and the reference may be answered against the workman.

12. I have heard the counsel for the parties and also gone through the record, enquiry proceedings, as well as others passed by the disciplinary authority and appellant authority.

13. First and foremost question to be decided is whether the enquiry conducted against the workman was fair, proper and in accordance with the principles of natural justice?

14. So far as the charges against the workman are concerned the workman (since deceased) was given the charge sheet containing 8 charges against him as mentioned in the charge sheet and in annexures. The workman (since deceased) was given opportunity to participate in the enquiry proceedings and he participated as well. From the perusal of the enquiry report it is clearly revealed that opportunity was provided to the workman to defend himself through the union representative of his choice. Workman himself participated in the enquiry till the end. Workman was also afforded opportunity to defend himself. Workman examined 2 witnesses in defence and 14 defence documents were also submitted by him where as the management examined 5 witnesses and submitted 245 documents. The list of witnesses and copies of the prosecution documents were also provided to the workman. During the enquiry proceedings workman admitted that "all entries in ledgers and pass books are in his own hand writing". Workman submitted the written briefs during enquiry proceedings. Enquiry officer in his detailed enquiry reported mentioned that "all entries have been done by Shri Khawla and this has already been admitted by Shri Khawla that all entries in ledger accounts and pass books have been done by him".

15. Enquiry officer given his finding that the charges leveled against the workman from charges No. 1 to 8 have been proved.

16. The disciplinary authority after considering the enquiry proceedings and enquiry report and after considering the facts and circumstances of the case dismissed the workman from service. The workman preferred departmental appeal against the order of the disciplinary authority to the appellate authority which was also rejected by the appellate authority after considering the same.

17. So far as the enquiry is concerned, from the enquiry proceedings and enquiry report, order of the disciplinary authority and appellant authority, it is revealed that the workman was given full opportunity to defend himself. The workman was allowed to produce his witnesses in defence. He was given the opportunity to defence himself through the representative of the union of his choice. He continues to defend himself in the enquiry till the end. The workman failed to show that he was denied to examine documents during enquiry, workman also failed to point out any infirmity in the enquiry proceedings conducted by the enquiry officer. There is nothing to show that enquiry conduct was not in accordance with the principles of natural justice.

18. On behalf of the workman it is submitted during arguments that the criminal trial on the same set of charges was initiated by the management in the court of Additional Chief Judicial Magistrate Barsar, District Hamirpur (HP) and the workman was acquitted of the charges under section 409, 420 and 473 of IPC. The copy of judgment of Additional Chief Judicial Magistrate dated 28.6.2003 has also been filed on behalf of the workman. It is further

submitted on behalf of the workman that management filed a recovery suit in the civil court which was also dismissed by the Civil Court.

19. The management submitted that parameters for conducting the enquiry and criminal trial are different. In departmental enquiry different principles are followed. In 2013 Labour Law reporter page 843, Deputy General Manager Indian Bank Versus Presiding Officer Central Govt Industrial Tribunal-cum-Labour Court Chennai and another Hon'ble Madras High Court has held that standard of evidence in criminal trial and the disciplinary proceedings is entirely different as the rigid rule of evidence are not applicable in the disciplinary proceedings hence the acquittal of the employee in the criminal trial will have no bearing upon the punishment imposed by the disciplinary authority.

20. On behalf of the workman it is submitted during arguments that punishment is disproportionate to the charges leveled against the workman. In 2013 LLR page 180 Canara Bank Versus Naresh Kumar Gupta, the Hon'ble Delhi High Court held that:—

> "Dismissal—When justified—Respondent was a clerk/cashier—He failed to credit the amounts deposited by two customers in their S/B accounts on the same day—Amounts were credited in respective accounts on the next day—In one case, he credited the amount in the respective account after more than 20 days—Charge-sheet was issued to him—Enquiry was held—Out of three charges two were proved Respondent was dismissed from service—Tribunal awarded reinstatement with full back-wages to the respondent holding that charges were not proved against the respondent—Negligence of respondent was a minor typographical error-Petitioner challenged Award passed by the Tribunal by filing writ petition-held, temporary embezzlement of customer's money is a serious misconduct which cannot be lightly brushed aside—Punishment of dismissal is neither harsh nor disproportionate—Hence, impugned Award is set aside".

21. In view of the discussion made above it is held that enquiry was conducted against the workman in fair and proper manner and in accordance with the principles of natural justice and the punishment of dismissal is neither harsh nor disproportionate to the charges. Resultantly the action of the management of Punjab National Bank, District Hamirpur (HP) in dismissing Shri Surinder Kumar (since deceased) clerk-cum-cashier from Bank services *w.e.f.* 01.07.2002 is just and legal and he is not entitled to any relief. The reference is answered accordingly. Hard copy as well as soft copy be sent to the Central Govt. for information & publication.

Chandigarh
5.12.2013 S.P. SINGH, Presiding Officer.

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 342.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **सेन्ट्रल बैंक ऑफ इण्डिया** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (11/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/270/2003-आई आर (बी-II)]
रवि कुमार अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 11/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 10/01/2014.

[No. L-12011/270/2003-IR(B-II)]
RAVI KUMAR Section Officers

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2004

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9, Sanwer road,
Ujjain ....Workman/Union

Versus

Regional Manager,
Central Bank of India,
Regional Office, 6/3,
Race Course Road,
Indore ....Management

AWARD

(Passed on this 10th day of December, 2013)

1. As per letter dated 8-3-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No L-12011/

270/2003-IR(B-II). The dispute under reference relates to:

> "Whether the action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Manoj Likhar and not regularizing his services is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6, Case of Ist party workman is that he was working as casual employee for 60 days in 1984, 90 days in 1985, 60 days in 1987-88 in different branch of the Bank at Indore. That as per Bipartite settlement dated 6-4-93, the employees working for 90 days or more during 1982 to 1990 are entitled for appointment on permanent basis. That Ist party workman was called for written test on 9-3-93. He further submits that the answer-sheet given to him was indicating for Schedule Caste. Vide letter dated 26-9-93, was informed for his selection as peon. He was called for personal interview on 12-7-93. He further submits that after his personal interview, panel list was published. His name was appearing at Sl. No 3 in the panel list. In the year 1987, Ist party workman was employed on regular pay scale for 60 days. He was again called for employment from 1-8-99 to 28-8-99. Despite his name appeared in selection list, he was not appointed as permanent employee. He had submitted representations to ALC, Bhopal.

3. Ist party workman further submits that he and other employee Rajesh and Pankaj were not appointed as permanent employees. Despite of their selection after the interview and written test conducted by IInd party. That letter dated 7-7-2003 by General Manager, Mumbai was informed that the list is alive. That his services are discontinued from 29-9-99 in violation of Section 25-F, G.N of I.D. Act. He was not given one months notice, retrenchment compensation is not paid to him. The list of employees is not displayed on notice board. For violation of statutory provisions of Ist party submits that termination of his service is illegal. He prays for reinstatement with consequential benefits.

4. IInd party field Written Statement denying claim of Ist party. That Shri Ram Nagwanshi claiming to be General Secretary of Daily Wage Employees Union has not filed any document about his authorization. That Ist party has not produced resolution authorizing him to represent workman. The document of membership are not produced. Shri Ram Nagwanshi has no locus standi to represent workman. That as he is a dismissed employee. That as per Section-6,21 of Table Union Act, the dismissed employee cannot represent co-employee. It is submitted that Ram Nagwanshi is carrying his profession under rise of Trade Union Activities.

5. IInd party filed Written Statement at Page 5/1 to 5/3. Claim of Ist party is denied. Letter dated 12-3-91 was received as per the settlement with Union dated 24-12-90. That circular dated 20-9-93 provided the employees sponsored through Employment Exchange were considered. The employees working for 90 days during 1982 to 1986 and employees working for 60 days in 1987 to 90 were also considered. The successful candidates were included in the panel list. The panel list will continue to remain in force till its life is over. IInd party denied that Ist party workman worked for 60 days in 160 days during any of the year. It is therefore submitted that workman is not entitled to the relief prayed by him.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Manoj Likhar and not regularizing his services is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Ist party workman is challenging his termination from services as per his contentions He was not regularized despite of selection after Written Test and interview for permanent peon. The services were discontinued from 29-9-99 in violation of Section 25-F, G, N of I.D. Act. workman has produced documents Exhibit W-I letter by General Manager (P) providing absorption of temporary employee working for 90 days during 1-1-90 to 24-12-90 and temporary employees working for 60 days during 1987 to 1990. Document Exhibit W-2 is letter calling for Written Test for recruitment of peon. Exhibit W-3 is letter given to Ist party workman for personal interview on 12-9-1953. It also refers to the recruitment of peon. Exhibit W-4 is list of successful candidates. name of Ist party workman is appearing at Sl. No. 3 of candidates belonging to SC, ST. Exhibit W-5 is letter given to workman informing that he was appointed for the period 5-8-99 to 28-8-99 as sweeper. Said document clearly shows that his appointment was for specific period. Workman has not produced documents of his appointment as on the post of permanent sweeper. Document Exhibit W-6 is copy of application submitted to ALC, Bhopal in support of his claim. Exhibit W-7 is copy of reply filed before ALC by IInd party. IInd party has submitted that the Ist party workman was called for Written Test and oral interview alongwith Rajesh Kalyani, Pankaj Bundela. That actiona s per rules shall be taken. Exhibit W-8 is copy of reply submitted by IInd party before ALC that the claim of Ist party is not admitted. Exhibit W-9 is letter given by Shri

Ram Nagwanshi so called Secretary of Daily Wage employee Union to Labour Ministry of Government of India requesting inspection of Central Bank. Exhibit W-10 is copy of payment of wages. W-11 is copy of letter given by Union to the Manager of the Bank. Exhibit W-2 is letter given by ALC calling report from the management. Exhibit W-13 is letter given by Secretary of Daily Employees Union pursuing claim in the matter. Exhibit W-14 is also the similar letter given by management. Management had issued instructions that the work has been taken from the workers instead of other persons continued to employee. Exhibit W-15 is letter given by Secretary of the Union. Exhibit W-16 is letter given by management. It is admitted that the candidates were interviewed.

8. Ist party workman filed affidavit of his evidence contending that he had worked for 60 days in 1984, 90 days in 1985, 60 days in 1986, 1987, 1988 & 1989. He has also stated that he was called for Written Test on 14-3-93. His name was appearing at Sl. No. 3 of SC, ST candidates. That he was not given appointment as permanent employee. In his cross-examination, workman says that in 1985, he worked for 60 days , from 1986, he worked continuously in different branches of the Central Bank. He was working on daily wages. He worked maximum 60 days. That he had passed Written Test, he belong to SC. He claims ignorance how many post are vacant in the Bank. He admits that appointments are made only when the post are vacant. That any of the candidates selected after interview are not given appointment. He denies that the post are not vacant in the Bank.

9. Management has not adduced evidence. The documents and evidence produced by workman are not in respect of the selection made for permanent appointment. Rather the evidence shows that panel list of daily wage employee was prepared. The evidence of the workman is not sufficient to prove that he was continuously working for more than 240 days during any of the year. Therefore the workman is not covered under Section 25-B of I.D. Act. He is not entitled to protection under Section 25-F of I.D. Act. Therefore appointment of Ist party workman as per Document Exhibit W-5 was for specific period of 23 days. Therefore termination of his services in violation of Section 25-F cannot be said illegal. Workman himself admits that any of the candidates in the panel list were not given appointment. Only Ist party workman cannot claim appointment on the post of permanent peon. His claim in that regard is not justified. For above reasons, I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:—

(1) Action of IInd party in terminating the services of Shri Manoj Likhar and not regularizing his services is proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 343.—औद्योगिक विवाद अधिनियम-1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (130/02) प्रकाशित करती है जो केन्द्रीय सरकार को 8.01.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/92/2002-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 130/02) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 10.01.2014

[No. L-12012/92/2002-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/130/2002
PRESIDING OFFICER: SHRI R.B. PATLE

Shri Prakash Rao,
S/o Late Ramu Dange,
opp Sharma Garage,
H.No. 7, C/o Naidu, Hatampura,
Khandwa (MP) .....Workman

Versus

Regional Manager,
Central Bank of India,
Regional Office,
Above city Post office,
Mangalwara,
Hoshangabad .....Management

AWARD

(Passed on this 4th day of December 2013)

1. As per letter dated 6-9-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/92/2002-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager, Central Bank of India, Hoshangabad in terminating the services of Shri Prakash Rao, S/o

Late Ramu Dange w.e.f. 31-8-2001 is legal and justified? If not to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 4/1 to 4/3. Case of Ist party workman is that he was engaged as peon on daily wages by IInd party from 10-1-91. He was working in Shivaji Square Branch Khandwa till 31-8-2001. His services were orally terminated from 1-9-2001. That he was working on daily wages from Monday to Saturday. He was regularly engaged by the IInd party. However in order of suppress the facts, the wages were paid in different names. That he was continuously working with IInd party as peon. He was not paid wages for weekly holidays. From 1-9-2000 till 31-8-2001, he had worked for 302 days. He was working from 10.30 AM till end of the day. He had completed 240 days continuous service. His services were terminated without notice, pay in lieu of notice was not paid to him. he was not paid retrenchment compensation. On such ground, he submits that his services are terminated in violation of Section 25-F of I.D. Act. He prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 8/1 to 8/3. IInd party totally denied claim of workman. IInd party submits that workman was engaged on daily wages. He cannot be said regular employee, provisions of I.D. Act are not applicable to him. In the matter, the dispute is not tenable. Workman has submitted misleading facts. The material facts were supplied by him. That workman had not completed 240 days continuous service. He was engaged casually on daily wages. His appointment was ending at end of the work. Violation of Section 25-F is denied contending that provisions of I.D. Act are not applicable as the workman are not working as employee.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the action of the management of Regional Manager, Central Bank of India, Hoshangabad in terminating the services of Shri Prakash Rao, S/o Late Ramu Dange w.e.f. 31-8-2001 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

5. Though workman is challenging termination of his services for violation of Section 25-F of I.D. Act, claiming that he was regularly working as peon from 10-1-91 till 31.8.01. He has not adduced evidence since support of his claim. The evidence of workman was closed on 14-1-2011. Management also did not advance evidence. The evidence of management was closed on 16-8-2013. As such both parties failed to adbduce evidence. Both parties did not properly participate in reference proceedings as workman has not abduced evidence to substantiate his contentions, that his services were terminated in violation of section 25-F of I.D. Act. I record my finding in Point No. 1 in Negative.

6. In the result, award is passed as under:—

(1) Action of the management of Regional Manager, Central Bank of India, Hoshangabad in terminating the services of Shri Prakash Rao, S/o Late Ramu dange w.e.f. 31.8.2001 is proper.

(2) Workman is not entitled to relief as claimed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानडला पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक वाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (104/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-37011/06/2008-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 344.—In pursuance of Section 17 of the Industrial Disptues Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 104/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 10.01.2014

[No. L-37011/06/2008-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 22nd October, 2013

Reference: (CGITA) No-104/2010
Reference (I.T.C.) No. 1690/08(Old)

The Chairman
Kandla Port Trust,
Post Box No. 50
Gandhidham (Kutch) ...First Party

And

Their Workman
Ramesh H. Gehani
Through the General Secretary,
Transport & Dock Workers Union, Kandla
21, Yogesh Building, Plot No. 586,

Gandhidham (Kutch) ...Second Party

For the 1st Party : Shri K.V. Gadhia, Advocate
Shri Yogi K. Gadhia, Advocate

For the 2nd party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide adjudication order No. L-37011/6/2008-IR(B-II) dated 22.10.2008 referred the dispute for adjudication to Industrial Tribunal, Ahmedabad (Gujarat) on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the Chairman, Kandala Port Trust, P.O. Box No. 50, Gandhidham, Kutch in not paying salary as per designation Superintendent (Accounts) to Shri Ramesh H. Gehani, Supt. (Accounts) w.e.f. 01.08.2007 to31.08.2007 is legal and justified? What relief the workman concerned is entitled to?"

2. Even upon notice by the Tribunal (Industrial Tribunal, Ahmedabad) the 2nd party neither appear nor filed statement of claim when the case record received in thsi C.G.I.T-cum-Labour Court on transfer by order of MOL, New Delhi again fresh notice were sent to the parties and the 1st party (K.P.T.) appeared and filed Vakilpatra in favour of Gadhia Associates *vide* Ext. 4 but the 2nd party failed to appear in this case.

3. The 2nd party who raised the Industrial dispute is duty bound to file statement of claim since burden of providing that the action of the Management of K.P.T. is illegal is not paying salary as per designation is upon the 2nd party Union. The 2nd party has lost interest in this case. So the reference is fit to be dismissed.

The terms of reference is answered in favour of the 1st party that the action of the Chairman, K.P.T. in not paying salary as per designation (Superintendent Accounts) to Shri Ramesh H. Gehani with effect from 01.08.2007 to 31.08.2007 is legal and justified.

The reference is, therefore, dismissed.

Let a copy of Award be sent for publication u/s 17 (1) to the appropriate Government.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 345.—औद्योगिक विवाद अधिनियम-1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 33/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/38/1994-आईआर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 33/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 10.01.2014.

[No. L-12011/38/1994-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/33/1999 Date: 11.12.2013

Party No. 1 : The Zonal Manager,
Bank of India, Nagpur Zone, Kingsway,
Nagpur.

Party No. 2 : Joint General Secretary,
Bank of India Workers Organization,
521, Congress Nagar, Nagpur.

AWARD

(Dated: 11th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation of the management of Bank of India and their workmen, for adjudication, to the Central Governmnet Industrial Tribunal-cum-Labour Court, Jabalpur as per letter No. L-12011/38/94-IR (B-II) dated 30.12.1994, with the following schedule:—

"Whether the demand of the Bank of India Workers' Organization, Nagpur on the management of Bank of India, Nagpur for regularization of the services of 14

workmen (as per list attached) is justified? If so, what relief is the said workmen entitled to?"

Subsequently, the reference was transferred by the Central Government to this Tribunal for disposal in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, on behalf of the 14 workmen (as per list furnished with the letter of reference), ("the workmen" in short), the union, Bank of India Workers' Organization, ("the union" in short) filed the statement of claim and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workmen as presented by the union in the statement of claim is that party no. 1 is a nationalized bank and it (union) is a registered trade union and the service conditions of the employees of the bank are *inter-alia* governed by the provisions of Sastry Award, Desai Award and bipartite settlements signed under the Act and the workmen are working as sub-staff at different branches of Party No. 1 since last so many years and they were sponsored from respective Employment Exchange to the Bank and each of them has put in more than 100 days of employment in the Bank and from the nature of duties extracted from the workmen, it can be found that the same is of permanent nature. It is further pleaded by the union on behalf of the workmen that Sastry Award has classified the employees working in the Bank into three categories, *viz*., permanent, temporary and probationary and there is no other category of employee provided for in the Sastry Award and naturally therefore, the party No. 1 is under mandate to employ persons in any one of the aforesaid categories and there is restriction for appointment of employees on temporary basis for a period of three months and in the light of the aforesaid provisions of Sastry Award if the facts of this case are perused, it will be observed that the services of each of the workmen has been utilized since seven to eight years and the breaks given in their services were artificial breaks to avoid obligation of law and all of them have put in more than 240 days of work preceding the 12 months of the date of termination and therefore, provisions of Sections 25-B and 25-F of the Act are attracted and by virtue of having put in more than six months of service, they are entitled and by virtue of having put in more than six months of service, they are entitled for the status of permanent employee and the party No. 1 is adopting such practice of using employees for years together as per their whims and without giving them the status of permanency much less regularisation in services and the action of party No. 1 is violative of para 10 of schedule V to the Act.

The union has prayed for a direction to the party no. 1 to regularize the services of the workman in sub-staff cadre on permanent basis, with all consequential benefits and to pay apporpriate wages as per bipartite settlement with retrospective effect.

3. The party No. 1 in the written statement has pleaded *inter-alia* that the workmen have been working from time to time as budlee sepoys on leave vacancies or when additional staff is required for coping up with the temporary increase in the work and none of them has put in more than 1000 days of work as alleged and since a budlee sepoy works in place of a regular employee, who may be on leave or absent due to any other cause, there could not be any difference in the work performed by the budlee sepoy and the permanent staff and there was no breach of provisions of Section 25-B and 25-F of the Act as alleged and there is no provision under which a budlee sepoy, who puts in more than six months of service is entitled to status of permanent employee and budlee sepoys are not automatically entitled to permanency by merely putting in a particular number of budlee days and their absorption in permanent service is clearly dependent upon availability of appropriate number of vacancies at the particular Zone/ Region as the case may be and as a matter of fact, except workmen, Shri R.M. Purohit and Shri Rambhau Nakade, The other workmen are on the approved panel of the Bank and it was stated even before the Conciliation Authority that they would be finally absorbed in regular service of the bank as and when vacancies would arise, on the basis of seniority depending upon the number of budlee working days and as workmen, Shri R.M. Purohit and Shri Rambhau Nakade were engaged by the respective branches purely on casual basis, they cannot claim any regularisation and there was no violation of para 10 of the schedule V of the Act and the Union/Workmen are not entitled to any relief.

4. In support of the claim, the union has examined nine witnesses including five of the workmen. The witnesses examined by the union are-(1) Shri Vinayak Joshi, (2) Shri Shirish A. Damle, (3) Shri Arvind M. Tamhaney, (4) Shri Rajendra M. Dahikar (5) Shri Prakash U. Awarde, (6) Shri Manohar G. Khadgi, (7) Shri Rambhau Nakade, (8) Shri Sahebrao N. Dware and (9) Shri Kishore Kisan Chavan.

It is to be mentioned here that though the evidence of workman, Shri Purosottam W. Domne on affidavit had been filed, the said workman was not produced for his cross-examination, so his evidence cannot be taken into consideration.

On the other hand, two witnesses, namely, Shri Rajkumar T. Naik and Shri Lakshmichand S. Kharole have been examined as the two witnesses on behalf of the party No. 1.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is

limited to the points specifically referred for its adjudication and to matters incidental there to.

6. During the course of argument, it was submitted by the union representative that the workmen were engaged as peons at various branches of party No. 1 and the appointment of the workmen was made by the administrative office of party No. 1 after due interview and their names were called for from the Employment Exchange and they were transferred to different branches as per the orders of the Regional and Zonal Office of party No. 1 and the workmen were required to perform the duties of full time peons, although they were paid on daily wages basis from the first date of their respective appointment and out of the 14 workmen, eight workmen were regularized during the pendency of the reference and the six workmen, namely, Prakash U. Awarde, Manohar G. Khadgi, Rambhau Nakade, Sahebrao No. Dware, Purosottam W. Dhomne and Kishore K. Chavan, who joined the services of party No. 1 on 01.04.1985, 25.01.1984, 02.08.1986, 28.09.1985, 30.06.1986 and 02.02.1986 respectively were not regularized by the Bank, despite the existence of permanent vacancies and there was violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and the Party No. 1 adopted unfair labour practice. It was further submitted by the union representative that Party No. 1 has virtually admitted the allegations made in the statement of claim, in their written statement and from the oral evidence adduced by the union, which has not been challenged seriously in the cross-examination and the documentary evidence produced by the union, it can be held that the claim of the workmen has been fully proved and as such, the remaining six workmen as mentioned above are entitled for regulisation in service with continuity, full back wages and all consequential benefits.

It was further submitted by the union representative that Shri Nakade was terminated from services by the party No. 1 during the pendency of the reference and before his discontinuance from services, Shri Nakade had completed nearly 17 years of service and every year he had completed 240 days of service and from the evidence of the workman and documents produced, such facts have been proved beyond doubt and the discontinuance of Shri Nakade was without any notice or reason and juniors to Shri Nakade were retained and regularized in service by party No. 1 and therefore, the workman, Shri Nakade is entitled for reinstatement in service and for regularisation and all the workmen are entitled to be regularized from the first date of their engagement.

7. Per contra, it was submitted by the respresentative for the party No. 1 that the workmen came to be appointed as sepoy on casual basis and against the leave vacancies, due to the absence of the permanent staff posted in the respective branches and the workmen, namely, R.M. Purohit, Y.C. Yedke, Bhagde, Gujbhiye, Tembhekar, Tohde, Khadgi, S.N. Ateand R.N. Kurve have already been absorbed in services and workmen, Kishan, Chavan, S.N. Dware, Prakash Awarde, Purosottam Dhomne and Rambhau Nakade have contested the present reference. It was further submitted by the management representative that in the written statement, it has been specifically pleaded that workmen, R.M. Purohit and Rambhau Nakade were appointed on casual basis and they are not entitled for regularisation and none of the said workmen had completed 240 days of work in any calendar year and the affidavits of the witnesses examined by the union are general affidavits and no reliance can be placed on the same and no document has been produced by the workmen to demonstrate that they had worked for 240 days in any calendar year, so the provisions of the Act are not applicable and Party No. 1 did not adopt any unfaire labour practice. It was also submitted by the management representative that workmen R.M. Purohit failed to adduce any evidence, so as to demonstrate his case and to prove the same and he also failed to enter into the witness box and therefore, he is not entitled for any relief and workman Rambhau Nakade in his evidence has admitted that he was terminated from services in 2002 and as the statement of claim was not amended seeking the relief of reinstatement in service by setting aside the order of termination, he is not entitled for any relief much less the relief of regularisation and workman, Rambhau in his cross-examination has admitted that he has not filed on record any document to demonstrate that he was sponsored through the Employment Exchange and he had received any call letter issued by the party No. 1 to him and he has also admitted that no appointment letter was issued to him and as he had not questioned his termination, the question of granting of any relief to him does not arise.

In support of the submissions, reliance was placed by Party No. 1 on the decisions reported in (2006) 1 SCC - 106 (R.M. Yellatti Vs Asstt. Executive Engineer), (2006) 9 SCC - 697 (Krishna Bhagya Jal Nigam Ltd. Vs Mohd. Raffi), (2006) 9 SCC - 132 (Surendra Nagar District Panchayat Vs Gangaben), writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC - 221 (Reserve Bank of India Vs Gopinath Sharma) and 2006 AIR SCW. - 1991 (Secretary Vs. Umadevi).

8. Though the reference has been made by the Central Government for adjudication of the legality or otherwise of the demand of the union for the regularisation of the workman in the services of the Bank, the union, in the guise of raising the dispute on behalf the workman has tried to challenge the policy adopted by the party No. 1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

9. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC - 221 (supra). The Hon'ble Apex Court have held that:—

> "Labour Law-Dialy wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

10. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in catena of decisions including the decision reported in 2006 AIR SCW-1991 (Secretary, State of Karnataka Vs. Umadevi & others) (Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:—

> "Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/operated corporations-Appointment-Modes of appointment- Held regularization cannot be a mode of appointment- Public Sector - Appointment - Mode of appointment- Held, regularization cannot be a mode of appointment- Labour Law - Appointment - Mode of appointment - Held, regularization cannot be a mode of appointment - Regularization - Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that:

> "The term 'termporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a termporary employee, and it is well settled that a termporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required proceudre, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:—

> "Employment on daily wage - Confers no right of permanent employment - Daily wager appointed on less than minimum wages - Not forced labour - Continued on post for long period - Daily wagers from a class by themselves - They cannot claim parity vis-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.
>
> Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

11. In this case, the schedule of reference is regarding the justification or otherwise of the demand of the union for regularisation of the services of the 14 workmen, as per the list attached with the letter of reference.

The union in the statement of claim has also made prayer for regularisation of the workmen immediately.

As from the materials on record, specifically, the suggestion given to Shri Rajkumar T. Naik, the witness No. 1 for the party No. 1 in his cross-examination and the evidence of workman, Shri Manohar G. Khadgi, it is found that the workmen, namely, 1. Khadgi, 2. R.M. Purohit, 3. Y.C. Yedke, 4. Bhagade, 5. Tembhekar, 6. Gajbhiye, 7. Rokde

alias Tohde, 8. S.N. Ate and 9. R.N. Kurve have already been regularized by the party No. 1.

Now, in this reference, the industrial dispute in regard to the rest five workmen, namely, (i) P.U. Awade, (ii) Rambhau Nakade, (iii) S.N. Daware, (iv) Dhomne and Kishore Kishan Chavan is to be considered.

12. Persued the record including the pleadings made by the parties, evidence produced on record and submissions made in the written notes of argument.

The Party No. 1 in the written statement has pleaded that, "There was an understanding dated 10.02.1988 reached between the Federation of the union and the management and the said understanding, it was provided that the Budlee Sepoys on the approved panels, who have completed 240 budlee days service as on 01.02.1988 in a block of 12 months or a calendar year be continued on panels and deployed on leave vacancies on need basis and be absorbed in future permanent vacancies that may arise during the year 1988 and those Budlee Sepoys on approved panels, who have not completed 240 days of budlee service in a block of 12 months or a calendar year are to be continued on panel and be engaged on need basis in leave vacancies that may arise from time to time at branches where no budlee sepoys, who have not completed 240 days are avialable on panels and their case for absorption in permanent service of the Bank be considered in permanent vacancies that may arise in subsequent years."

It is further pleaded by the Party No. 1 in paragraph 6 of the written statement that, "Except Shri R.M. Purohit and Shri Rambhau Nakade, the other sepoys are on the approved panel of the Bank and it was stated even before the Canciliation Authority that these persons be finally absorbed in regular service of the Bank as and when vacancy arises basing on seniority depending on the number of budlee days worked."

In view of the above pleadings of Party No. 1, the workmen, namely, P.U. Awarde, S.N. Dware, Dhomne and Kishore Kishan Chavan are entitled for their permanent absorption in the services of Party No. 1 and the Party No. 1 is bound to absorbed them on permanent basis.

Now, the question for consideration is as to from what date these said four workmen are entitled for permanent absorption. It is clear from the materials on record that number of permanent vacancies in sub-staff in the Bank were are there since long. So, the four workmen namely, P.U. Awarde, S.N. Dware, Dhomne and Kishor Kishan Chavan are entitled for regularization in permanent service from the date on which the last workmen out of the nine workmen involved in this reference and who have already been regularized in the permanent service of the Bank, was regularized in the permanent service of the Bank. The above named four workmen are also entitled for the differential back wages due to such regularization and all consequeutial benefits from the date of such regularization of their services.

13. So far the case of workman, Rambhau Nakade is concerned, it is the admitted case that he was not engaged by the Bank since May, 2002 and since May, 2002 he is not engaged by the Party No. 1 even on casual daily wages basis. The workman, Rambhau in his evidence on affidavit has categorically stated that he was discontinued without any reason and later on 29.05.2002.

As already mentioned earlier, this is a reference for adjudication of the Industrial Dispute regarding the justification or otherwise of the demand of the union for regularization of the services of the 14 workmen. After the disengagement of the workman, Rambhau, the union neither raised any dispute challenging the discontinuance of the said workman by Party No. 1 either before the Conciliation Authority or by making suitable amendment of the statement of claim filed in this case.

It is the admitted case that the engagement of the workman, Rambhau was on casual basis on daily wages as and when required. Even though it is pleaded by the union and stated by the workman in his evidence on affidavit that he worked continuously from 1986 till 29.05.2002 and had completed 240 days of work on every calendar year, no reliable documentary evidence has been produced to prove such facts. The workman, Rambhau in his cross-examination has admitted that no document has been filed by him to show that his name was sponsored by the Employment Exchange and he received a call letter from the Bank to attend the interview and he has furhter admitted that no appointment letter was issued in his favour by the Bank.

As the disengagement of the workman, Rambhau Nakade has not been challenged, it is not possible to pass any order for his reinstatement in service and for his regularization in service of Party No. 1. The workman, Rambhau Nakade is not entitled to any relief. Hence, it is ordered:—

ORDER

The damand of the Bank of India Workers' Organization, Nagpur on the management of Bank of India, Nagpur for regularization of the services of 14 workmen (as per list attached) except the workman, Rambhau Nakade is justified. As the nine workmen, namely, 1. Khadgi, 2. R.M. Purohit, 3. Y.C. Yedke, 4. Bhagade, 5. Tembhekar, 6. Gajbhiye, 7. Rokde *alias* Tohde, 8. S.N. Ate and 9. R.N. Kurve have already been regularized by the party No. 1, no specific order is passed regarding their regularization.

The four workmen namely, P.U. Awarde, S.N. Dware, Dhomne and Kishore Kishan Chavan are entitled for regularization in permanent service from the date on which the last workmen out of the nine workmen involved in this reference and who have already been regularized in the permanent service of the Bank, was regularized in the

permenent service of the Bank. The above named four workmen are also entitled for the differential back wages due to such regularization and all consequential benefits from the date of such regularization of their services.

The workman, Rambhau Nakade is not entitled to any relief.

The Party No. 1 is directed to implement the award within one month of the date of the publication of the award in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 जनवरी, 2014

का॰आ॰ 346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू इंडिया इंसोरेनस कंपनी लि॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1075/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-17012/4/99-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th January, 2014

S.O. 346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1075/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of New India Assurance Company Limited and their workmen, received by the Central Government on 10.01.2014.

[No. L-17012/4/99-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 1075/2005

Registered on 20.09.2005

Shri Anil Kumar Bansal S/o Shri Ravnak Chand Bansal, R/o House No. 1063, Jind House, Ambala

....Petitioner

Versus

New India Assurance Company Limited, The Divisional Manager, NIA Co. Ltd. Divisional Office, The Mall Road, Ambala.

....Respondents

APPEARANCES:

For the Workman Shri R.P. Rana, Adv.

For the Management Shri N.K. Zakhmi, Adv.

AWARD

(Passed on 2.12.2013)

Central Government *vide* Notification No. L-17012/4/99/IR(B-II) Dated 12.8.1999, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the Divisional Management, New India Assurance Co. Ltd., Ambala Cantt and Branch Manager New India Assurance Co. Ltd. Amba Market Ambala City in terminating the services of Shri Anil Kumar Bansal S/o Shri Raunak Chand *w.e.f.* 1.12.1987 is just and legal? If not, what relief the workman is entitled to?"

In response to the notice, workman appeared and submitted the statement of claim pleading that he was appointed as Water Boy-cum-Peon *w.e.f* 1.8.1933 by the respondent No. 2 on contract basis paying consolidated salary of Rs. 250/- per month. He continuously worked from 1.8.1983 to 30.11.1987 when his services were suddenly terminated. That the termination is illegal as he has completed more than 240 days of continuous service and the provisions of Section 25F of the Act were not complied with. That no inquiry was conducted prior to the termination of his services and the post is still in existence and the persons junior to him were retained in service.

He filed a Civil Suit in Ambala which he withdrew. That the order of termination dated 1.12.1987 be set aside.

Respondent management filed written reply pleading that the workman was engaged on purely contract basis and there was no relationship of an employer and employee between the parties and as such the reference is to be dismissed. It is further pleaded that the workman filed Civil Suit in the Court at Ambala which was dismissed and the appeal preferred by him withdrawn and as such the present reference is barred by the principles of res judicata.

In support of his case the workman appeared in the witness box and filed his affidavit reiterating his case as stated in the claim petition.

On the other hand the management has examined Shri Vasudev Sharma who filed his affidavit reiterating the case as stated in the written statement.

I have heard Shri R.P. Rana counsel for the workman and Shri N.K. Zakhmi counsel for the management.

It was contended by the learned counsel for the workman that the workman was appointed on 1.8.1983 on consolidated salary of Rs. 250/- per month and his services were illegally terminated on 30.11.1987 without complying with the provisions of the Act and as such the termination is illegal. He has further carried me through the consolidated statements Mark 'A' and letter dated 14.3.1989 Mark 'B' to submit that the workman has continuously withdrawn the salary and even the Branch Manager had written a letter to the Divisional Office that they were considering the appointment of the workman on regular basis, and these documents show that workman was a regular employee of the respndents whose services have been illegally terminated and he is entitled to reinstatement with all the consequential benefits.

I have considered the contention of the learned counsel.

It is the case of the workman himself that he was appointed as Peon-cum-Water Boy on contract basis paying consolidated salary of Rs. 250/- per month. Thus the workman himself admits that he was working on contract basis. When he was employed on contractual basis, he cannot claim any right to continue on the post after the contract comes to an end and in this respect reliance may be placed on Harminder Kaur and Others *Vs.* Union of India and Others 2006(1) S.C.T. 64. Thus the workman who was working on contract basis cannot claim any right to the post on which he was working and his services came to an end when his contract was terminated or the same was not renewed. Mark 'A' is the chart showing the salary paid to the workman. Since it is not denied that the workman worked on contractual basis and he was paid the salary as agreed above and the same do not establish by any stretch of imagination that he was employed on regular basis by the management. The respondent is an Assurance Company and it is nowhere the case of the workman that any regular procedure was adopted for giving appointment to him. Even no appointment letter was issued to the workman by the respondents nor it is claimed so by the workman. If the Branch Manager has written the letter dated 14.3.1989 Mark 'B', the same do not again confer any right on the plaintiff to continue in service or to invoke the provisions of the Act.

Thus it is to be concluded that he was not a regular employee of the respondents and his services were not terminated and he is not entitled to any relief and the reference is answered accordingly against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 15/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2014 को प्राप्त हुआ था।

[सं॰ एल-41012/138/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Indian Railway Welfare Organisation, and their workman, received by the Central Government on 13.01.2014.

[No. L-41012/138/2005-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DELHI

I.D. No. 15/2006

Shri Tejbir Sagar
C/o Delhi Labour Union,
Aggarwal Bhawan, G.T. Road,
Tis Hazari, Delhi-110054. ...Workman

Versus

The Managing Director,
Indian Railway Welfare Organisation,
Railway Complex, Shivaji Bridge,
Behind Shankar Market,
New Delhi-110001. ...Management

AWARD

Indian Railway Welfare Organisation (hereinafter referred to as the management) was formed and got registered with the Registrar, Societies Registration Act, 1860 (herein after referred to as the Societies Registration Act), to promote social welfare schemes with a view to acquire accommodation for serving railway personnel, retired railway personnel, spouses of deceased railway personal, personnel of public undertaking under Ministry of Railways, Central/State Government services, defence services personnel, public sector undertakings under the Central/State Government, salaried persons in private sector, such as companies, banks and schools etc. and to

do such things as are incidental or considered conducive to attainments and objectives or any of them. The management strives to carry out aforesaid objectives for its members. It functions on 'no proft no loss' basis to promote housing schemes all over India for its eligible allotees. For that purpose, the management employs required staff on tenure basis.

2. Shri Tejbir Singh was appointed as a driver by the management on 16.04.1991. On 22.06.1991, he fell ill and his services were discontinued. When he approached the management again, he was engaged as a motor khalasi with effect from 01.09.1991, to work at its housing project at NOIDA. His term of appointment was extended from time to time. On 21.02.1994, he was again appointed as driver of three wheeler scooter No. DL 1 CB 9047, to work at Indirapuram, Housing Project of the management. His term of appointment was extended from time to time. His services were disengaged on 31.10.2000. Aggrieved by that act, he filed a civil suit before the High Court of Delhi against the management. When pecuniary jurisdiction of subordinate courts was enhanced, the civil suit was transferred to district court, Tis Hazari, Delhi. On legal advice, the claimant withdrew that suit. He raised an industrial dispute before the Conciliation Officer. Since his claim was contested by the management, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-41012/138/2005-IR(B-I), New Delhi dated 22.05.1996, with following terms:

> "Whether termination of Shri Tejbir Singh by the management of IRWO with effect from 31.10.2000 is just, fair and legal? If not, to what relief the workman is entitled to and from which date?"

3. Claim statement was filed by Shri Tejbir Singh pleading therein that he joined employment with the management as driver on daily wage basis with effect from 16.04.1991. His designation was changed as motor khalasi, *vide* letter dated 30.08.1991. However, he continued to work as driver with the management. His designation was again changed as that of driver *vide* letter dated 17.02.1994. He was granted pay in the scale of Rs. 950-1500. He continuously worked with the management since 16.04.1991 and rendered services to entire satisfaction of his superiors. He was working on a job, which was of permanent in nature. However, the management was giving extension to term of his appointment from time to time with a view to circumvent law. On 11.10.2000, a letter was issued wherein it was mentioned that his services would no longer be required beyond 31.10.2000. His services were terminated with effect from 31.10.2000.

4. He pleads that a civil suit was filed by him alongwith his co-employee for regularization of their services. When his services were terminated on 31.10.2000, an interim application was moved before the High Court assailing action of illegal termination of his service. However, no specific order was passed on that application. When pecuniary jurisdiction of subordinate courts was enhanced, his civil suit was transferred to district court, Tis Hazari, Delhi. Ultimately, he withdrew his civil suit and sought liberty from the court to raise an industrial dispute.

5. Claimant projects that termination of his services was wholly illegal, bad, unjust and malafide. He assails action of termination of his services on following counts:

(i) The job against which he was working is of a regular and permanent nature, which still continues with the management.

(ii) He was a regular and permanent employee and could not be thrown out of job in the manner it has been done.

(iii) Action of the management in terminating his services amounts to unfair labour practice as provided in section 2(ra) read with Item No. 5 of the Fifth Schedule appended to the Industrial Disputes Act, 1947 (in short the Act).

(iv) Action of the management is also violative of Article 21 of the Constitution of India.

(v) He was quite innocent and had not committed any misconduct and in case of any alleged misconduct no memo or charge sheet was served upon him and no domestic inquiry was conducted against him. He was not afforded any opportunity of being heard. His services were terminated arbitraily and without following principles of natural justice.

(vi) In case of his retrenchment, no seniority list was displayed, nor any notice or pay in lieu thereof was offered and no service compensation was either offered or paid to him at the time of termination of services.

(vii) He has completed more than 240 days of continuous employment prior to his illegal termination.

(viii) He has been meted out with hostile discrimination as juniors to him have been retained in service while he was thrown out of job. Even otherwise, fresh hands were taken into employment after terminating his services.

(ix) Even otherwise, impugned termination of his services is violative of section 25-F, G and H of the Act, read with rules 76, 77 and 78 of the Industrial Disputes (Central), 1957.

6. He presents that action of termination of his services being illegal, is liable to be set aside. He claims reinstatement in service with continuity and full back wages.

7. Claim was demurred by the management pleading that it is a private society registered under Societies Registration Act. It is neither part of the Ministry of Railway nor an authority under the administrative control of Indian Railways. The Central Government was not the appropriate Government to make reference of the dispute to this Tribual for adjudication. This Tribunal has no jurisdiction to adjudicate the dispue between the claimant and the management.

8. The management pleads that it has been established as a welfare measure to acquire dwelling units for serving and retired personnel as well as their widows on 'no profit no loss' basis. The management promotes housing schemes all over India for eligible allotees. For promoting housing complexes at various stations all over India, the management employs required staff on fixed term and temporary basis. All employees from the post of khalasis to managing director are appointed for temporary and fixed tenure basis, since their requirement is solely on need basis. Such employees work with the management till the housing project is completed and handed over to the maintenance society of the members/allotees of the dwelling units or till such time the welfare activity of the management may require their services.

9. The management asserts that the claimant was appointed on fixed tenure as daily wager driver at its Noida Housing Project on 16.04.1991. When he fell ill on 22.06.1991, his employment was discontinued. He was again appointed at Noida Housing Project as a casual motor khalasi on 01.09.1991. He joined his services as such on 03.09.1991. He was given a fixed tenure for a period of 6 months, which was extended thrice till 02.03.1994. However, he was employed as a three wheeler scooter driver with effect from 21.02.1994 at its Indirapuram Housing Project, Distt. Ghaziabad, Uttar Pradesh. A three wheeler scooter was procured by the management for ferrying staff and records of the housing project. Tenure of service of the claimant was extended from time to time. When his tenure of service as three wheeler scooter driver came to an end on 31.10.2000, he was relieved from the employment. The said three wheeler scooter, which was being driven by the claimant, was extensively used on various project sites at Noida and Indirapuram. As engine of the three wheeler scooter outlived its life and became uneconomical, it was condemned. The three wheeler scooter was sold by way of public action to one Shri Satnam Singh on 13.11.2000. Since there was no requirement of three wheeler scooter driver any more, there was no job for the claimant for continuance of his term of employment. As such, employment of the claimant came to an end on 31.10.2000.

10. The management contends that the claimant was engaged on fixed tenure, which was not extended any further. Action of the management does not fall within the ambit of retrenchment as defined by setion 2(oo)(bb) of the Act. Since action of the management does not amount to retrenchment, provisions of section 25F and 25G of the Act have no application. For want of availability of job of three wheeler scooter driver, term of engagement of the claimant was not extended any further. It has been pleaded that the claim put forth by the claimant is not maintainable. His claim may be dismissed and an award may passed in favour of the management and against the claimant.

11. Claimant had examined himself in support of his claim. Shri Chander Bhan, Personnel Officer, entered the witness box to testify facts on behalf of the management. No other witness was examined by either of the parties.

12. After hearing the parties, an award was passed by the Tribunal on 07.06.2010 announcing therein that the appropriate Government to make a reference of dispute for adjudication, was the Government of NCT of Delhi. The Tribunal refrained its hands from entering into the merits of the matter.

13. The award was assailed by the claimant before the High Court of Delhi, *vide* writ petition No. 5094 of 2011. The writ petition was granted by the High Court *vide* its order dated 06.02.2013 declaring therein that the management can be said to be under the control and authority of the Central Government and, therefore the appropriate Government for making a reference of the dispute is the Central Government and not the Government of NCT of Delhi.

14. On remittance of the matter by High Court of Delhi, arguments were heard at the bar. Shri Surender Bhardwaj, authorized representatives, advanced arguments on behalf of the claimant. Shri A.K. Tiwari, authorized representatives, raised submissions on behalf of the management. Shri Surender Bhardwaj, authorized representative for the claimant as well as Shri Kamal Kumar Goswami, office superintendent (Legal) for the management, filed their written submissions also. I have given my careful consideration to arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy area as follows.

15. Out of facts testified by the claimant, it emerges that he was engaged as a car driver on 16.04.1991. He asserts that after three months of service, his designation was changed to motor Khalasi. However, he continued to work as a driver. Claimant declares that his designation was again changed to that of driver in 1994. He was getting his wages in the scale of Rs. 950-1500. Appointment letter Ex. WW1/1 has been brought over the record by the claimant. He unfolds that *vide* letter dated 09.03.1992, his services were regularized, copy of which letter is Ex. WW1/2. His term of appointment was extended by the management from time to time, *vide* letters Ex WW1/3-to Ex. WW1/14. He served the management till 31.10.2000, when his services were dispensed with.

16. Shri Chander Bhan deposed that the management engages services of some employees on temporary basis for fixed period. The claimant was engaged as a casual staff car driver on 16.04.1991. When he fells sick in June 1991, his services were discontinued. On 03.09.1991, he was engaged again as motor khalasi for a fixed period. In September 1994, he was again appointed as three wheeler scooter driver at Indirapuram Housing Project of the management. He remained in service of the management till 31.10.2000. His contract of service was not renewed any further since the project at Indirapuram had been completed and three wheeler scooter had outlived its life. It was condemned and disposed off. Thereafter, there was no vacancy of three wheeler scooter driver with the management.

17. Facts unfolded by the claimant as well as those deposed by Shri Chander Bhan are appreciated in the light of the documents brought over the record. Ex. WW1/1 is the initial order of appointment issued in favour of the claimant. On perusal of those documents, it emerged over the rocord that the claimant was appointed as a motor Khalasi on wages of Rs. 34.00 per day, purely on temporary basis with effect from 01.09.1991. It was stipulated therein that his services were purely temporary and could be terminated at any time without any notice. His headquarters was to be at NOIDA. He was required to perform his duties diligently, sincerely and to entire satisfaction of the management. Therefore, out of Ex. WW1/1 it came to light that the claimant was appointed as motor khalasi purely on temporary basis on wages of Rs. 34.00 per day. Regular scale of pay was granted in his favour *vide* letter Ex. WW 1/2. It is detailed therein that the competent authority has approved grant of regular grade of Rs. 750-940 in favour of the claimant with effect from 03.03.1992 on terms and conditions, which are extracted thus:

"1. That your appointment will be purely temporary for six months from 03.03.1992 and your service can be terminated at any time without giving any notice.

2. That you will be required to pass medical examination.

3. That your headquarters will be at NOIDA

4. That you will be entitled for TA/DA while on duty out of your headquarter as per rules in vogue in IRWO."

18. Temporary service as motor khalasi was extended for another period of six months, *vide* letter Ex. WW1/3. However, it was specified therein that terms and conditions contained in letter dated 09.03.1992 shall hold good for the extended period of engagement. Another extension of 6 months was given to the claimant *vide* letter 13.08.1999, proved as Ex. WW1/4. However, in this letter too, terms and conditions contained in letter dated 09.03.1992 were held to be good for the extended period. Out of these documents, it emerged that the claimant was engaged initially as a motor khalasi on daily rates of wages. He was again engaged for a fixed term of six months as motor khalasi. He was engaged for a fixed term of 6 months as motor khalasi *vide* Ex. WW1/2, which terms of engagement were extended for another two spells of 6 months, *vide* letters Ex. WW1/3 and Ex. WW1/4 respectively. Order of extension and terms of appointment remained constrained with stipulation that his services were purely temporary, which could be terminated at any time without giving any notice. It was also specified therein that his headquarter was at NOIDA. This fact brings it to the light of the day that the claimant was engaged by the management as a motor khalasi at its housing project at NOIDA.

19. The management took a decision to appoint the claimant on a post of driver at its Indirapuram Housing Project. Letter dated 17.02.1994, proved as Ex. WW1/5, was issued in his favour. In the said letter, it was made clear that his appointment was temporary for a period of 6 months. In case his performance is found not to be satisfactory, he would be reverted as motor khalasi at any time. His term of engagement was extended for a period of one year, *vide* letter dated 12.08.1994. Letter dated 12.08.1994, proved as Ex. WW1/6, makes it clear that terms and conditions contained in letter dated 09.03.1992 shall hold good for the extended period of engagement. Furhter extension for a period of one year was granted to him *vide* letter dated 18.07.1995, proved as Ex WW1/7. His services were again extended for a period of one year *vide* letter dated 04.08.1996, proved as Ex. WW1/8. Another extension of 6 months was granted to him *vide* letter, proved as Ex. WW1/9. His services were again extended upto 29.02.1999 *vide* letter dated 23.10.1998, proved as Ex. WW1/10. In the same manner, his terms of appointment was extended upto 30.04.1999, then upto 31.10.1998, for another period of 6 months at two spells *vide* letters dated 12.10.1999 and 11.04.2000, which documents are proved as Ex. WW1/11 to Ex. WW1/14. In all these letters the management has reiterated that terms and conditions contained in letter dated 09.03.1992 shall hold good for extended periods of engagement. Thus, it emerged over the record that it was emphasized by the management that the claimant has been engaged purely on temporary basis and his services were liable to be terminated at any time without any notice.

20. His engagement as driver was at Indirapuram Housing Project of the management. On 11.10.2000, the claimant was informed that due to non-availability of further work of driver at Indirapuram housing projects, his temporary contractual service would no longer be required beyond 31.10.2000. He was put to notice that his contractual service would stand terminated on 31.10.2000, in accordance with terms and conditions contained in letter dated 09.03.1992, 17.03.1994, 12.08.1994 and 11.04.2000, which were accepted by him. It is an admitted case of the parties that services of the claimant came to an end on 31.10.2000, when his contract of employment was not renewed any further.

21. Shri Chander Bhan testified that Indirapuram Housing Project of the management had been completed, hence contract of service of the claimant was not renewed any futher. He further explains that three wheeler scooter, which was being driven by the claimant, had outlived its life, hence it was condemned and disposed off. Since there was no vacancy of three wheeler scooter driver, his services were not extended any further. Facts unfolded by Shri Chander Bhan were not assailed by the claimant. The above documents as well as testimony of Shri Chander Bhan bring it to the light that the claimant was working at Indirapuram Housing Project of the management, which stood completed. Three wheeler scooter, which was being driven by the claimant had out lived its life, hence it was condemned and disposed off. Thus, it stood established over the record that the vehicle which was being driven by the claimant was disposed off and there was no other vehicle available with the management on which services of the claimant could be availed. Question for consideration would be as to whether action of the management in not renewing contract of employment of the claimant would amount to retrenchment? For an answer, definition of the term 'retrenchment' is to be construed. Clause (oo) of section 2 of the Act defines terms "retrenchment". For sake of convenience, the said definition is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

22. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill-health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

23. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to tretrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is reuled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumant Rao Shrike (1990 Lab. I.C. 100) and Balbir Singh (1990 (1) LLJ. 443). On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

"(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2 (oo)(bb),

(iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

24. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of sections 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

25. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clasue (bb) of section 2(oo) of the Act, in C.M. Venugopal (1994 (1) LLJ 597). As per fact of the case Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation, 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

26. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) A sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The Question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

27. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase (1997 (10) S.C.C 599) wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgement of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. *v.* Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2 (oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent mangement should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

28. In Harmohinder Singh (2001 (5) S.C.C. 540) an employee was appointed as a salesman by kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, inter alia, provided that his service could be terminated by one month's notice by either party. He ws served with a notice to the effect that his service would be relinquished with effect from 30.06.1989. Relying precedent in Uptron India Ltd. (1998 (6) S.C.C. 538) the Apex Court ruled that contract of service for a fixed term are exclused from the ambit of retrenchment. Decision in Balbir Singh (Supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

29. In Batala Coop. Sugar Mills Ltd. (2005 (8) S.C.C. 481) an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapurao Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court can not be maintained.

30. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His service were extend from time to time and finally dispensed with in June 1989. The Supreme Court ruled that engaged of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchement. His case was found to be covered under exception contained in sub-clause (bb) of section 2 (oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar (2003 (II) LLJ 359) has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act, if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand Samal were found to be relating to fixed term of appointment.

31. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High court of Delhi has observed thus:

> "... In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely convered under section 2 (00) (bb) of the Act. Giving of non extension did not amount to termination of servive, it was not a case of retrenchment".

32. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M. Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2 (oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of the claimant.

33. Now tuming to facts, the claimant was engaged for a period of 6 months vide Ex. WW1/2. His engagement was held to be temporary and liable to be terminated at any time without giving any notice. The said term of engagement was extended twice. Thereafter, vide letter dated 17.02.1994, he was engaged as driver temporarily for a period of 6 months at Indirapuram Housing Project of the management. His engagement was extended from time to time and lastly the management opted not to renew his contract of service, since housing project at Indirapuram stood completed. The three wheeler scooter, on which the claimant was engaged as driver, outlived its life, hence it was condemned and disposed off. On account of these facts, further extension in the term of engagement was not granted to the claimant by the management. Thus, it is evident that non-renewal of term of contract of service does not amount to retrenchment. Provisions of section 25-F of the Act does not come into play.

34. During the course of his arguments, claimant places reliance on the precedent in S.M. Nilajkar (supra) wherein termination of service of workmen engaged in a scheme or project was held not to amount to retrenchment within the meaning of clause (oo) of section 2 of the Act, subject to following conditions being specified:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided *inter alia* that the employment shall come to an end on the expiry of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

35. When facts of the present controversy were scanned, as detailed above, it came to light that the engagement letter Ex. WW1/5 highlights that he was engaged as driver at Indirapuram Housing Project of the management. Documents Ex.WW1/1 to Ex.WW1/4 were clear to the effect that he was engaged as motor khalasi in temporary capacity at NOIDA Housing Project of the management. Extension letters Ex.WW1/6 to Ex.WW1/14 make it apparent that the claimant was serving as contractual driver at Indirapuram Housing Project of the management. Thus, it is evident that the aforesaid documents put the claimant on notice that he was being engaged at Indirapuram Housing Project, which was to last for a particular length of time. He was well aware that his employment was short lived. His contract of employment consciously entered into, resulted in a notice on the date of commencement of his employment itself that his employment would be short lived and as per terms of contract, the same was liable to be terminated on expiry of the contract and the housing project coming to an end. Therefore, it is evident that all ingredients laid down by the Apex Court in S.M. Nilajkar (supra) stood satisfied. Claimant cannot question applicability of sub clause (bb) of clause (oo) of Section 2 of the Act to the present controversy.

36. Since non reneweal of the terms of contact of the claimant does not amount to retrenchment, the management was not under an obligation to comply with provisions of section 25-F of the Act. Action of the management in dispensing with his services with effect from 31.10.2000 is found to be just, fair and legal. Claimant is not entitled to any relief, muchless relief of reinstatement in service with continuity and full back wages. His claim statement is liable to be brushed aside. According, his claim is discarded. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Government for publication.

Dated : 03.12.2013

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 14/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/1/2014 को प्राप्त हुआ था।

[सं॰ एल-41012/08/2012-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2002) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of N.F. Railway and their workman, received by the Central Government on 13/01/14.

[No. L-41012/08/2012-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri L. C. Dey, M.A., LL.B.,
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 14 of 2012

In the matter of an Industrial Dispute between:

The Workman Sri Birendra Goala, Ex-Mason under N.F. Rly. Karimganj, Assam.

-Vrs-

The Management of N.F. Railway, Lumding Division, Lumding.

APPEARANCES

For the Workman : Mr. M. K. Mishra, Advocate

For the Management : Mr. K. C. Sarma, Advocate

Date of Award: 27.11.2013

AWARD

1. This Reference has been initiated on an Industrial Dispute exists between the employer in relation to the Management of N.F. Railway and their workman Sri Birendra Goala, which was referred to by the Ministry of Labour, Government of India, New Delhi *vide* their order No. L-41012/08/2012-IR(B-I) dated 22.03.2012. The Schedule of this Reference is as below.

SCHEDULE

"Whether the action of the Divisional Railway Manager (P), N. F. Railway, Lumding Division, P.O. Lumding-782447, Assam in deducting the damage rent w.e.f. 28.02.2002 to 25.12.2004 and recovering from the Retirement Gratuity and also whether the action of overlooking the Application dated 29.08.2002 for retention of Quarter for 08 (Eight) months w.e.f. 29.08.2002 for which damage rent has been recovered in respect of Shri Birendra Goala is legal and justified? To what relief the workman is entitled to?"

2. On receipt of the order of reference from the Ministry of Labour, this reference was registered and notices were issued to both the parties for filing their written statement and documents along with the direction to the parties to exchange their copies of written statement/claim statement and documents between them. Accordingly the workman has furnished zerox copies of 7 numbers of documents by post but no written statement has been submitted by him. The Managment appeared through their learned Advocate and prayed for time for filing written statement due to non filing of claim statement by workman. Thereafter the workman was issued notice afresh with direction to appear and submit his claim statement. The workman appeared and verbally prayed for time showing cause of his failure to engage the lawyer. On 11.6.2013 the workman again appeared but he did not submit his claim statement. Subsequently on 25.6.2013 the workman appeared and his engaged Advocate Mr. M. K. Mishra and submitted petition with prayer for time for filing claim statement, which was allowed. Thereafter the workman remained absent without any step. The Management also found absent with effect from 20.8.2013. Theareafter the reference was fixed on 3 consecutive dates i.e. 20.9.2013; 17.10.2013; and 18.11.2013 allowing the parties to submit their claim statement/written statement but both the parties are found absent without any step, which reveals that the parties more particularly the workman is not sincere and interested to proceed with the reference. Finding no alternative, hearing of this reference is closed vide order dated 27.11.2013 and the reference is disposed of on the basis of the documents available on record.

3. I have perused the record, it appears that the workman vide his letters dated 4.8.2012 addressed to the Hon'ble Minister, Government of India, Ministry of Labour with a copy to this Tribunal acknowledging receipt of the order of reference dated 22.3.2012 and alleging that the dispute has been referred to this Tribunal for adjudication and to pass Award within a period of 3 months but no action taken from any corner inspite of forwarding of the copy to the concerned authority by the Ministry. On receipt of the said letter the workman was again issued notice vide order dated 1.4.2013 asking him to appear and submit W.S. Thereafter the workman vide his letter dt. 8.9.12 sent by Post along with the zerox copies of pay slips, the application submitted by him to the SSE/Works/BPB, N.F. Railway, by Post, for retention of quarter for 8 months due to illness of his wife along with the supporting medical prescriptions; and a copy of the report of the Assistant Labour Commissioner (C), Silchar, Cachar. But without bringing those documents on record by way of evidence these documents could not be considered. As such, the notice was issued upon the workman afresh asking him to appear before this Court and to submit W.S. Then the workman appeared on 9.5.13 and prayed for time and again on 11.6.2013 the workman appeared but he did not submit any claim statement. Thereafter, the workman remained absent and accordingly the proceeding is closed vide the order dated 27.11.2013.

4. The Management although appeared through their learned Advocate but they did not submit any written statement subsequently they also remained absent with effect from 20.8.2013. Thereafter the hearing of this reference has been closed.

5. From the above discussion it has become crystal clear that although the Ministry has referred this dispute to this Tribunal for adjudication but the parties did not co-operate with the Court in spite of repeated steps taken by this Tribunal as well as allowing sufficient time to both the parties and hence, it has become difficult on my part to adjudicate the reference on merit and to grant any relief to the workman.

6. In the result, this reference is disposed of without granting any relief. Send the no relief Award to the Ministry as per provision of the law.

Given under my hand and seal of this Court on this 27th day of November, 2013, at Guwahati.

L.L. DEY, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **पालवान ग्रामा बैंक** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, **चेन्नई** के पंचाट (संदर्भ संख्या 46/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/07/2011-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2011) of the Central Government Industrial Tribunal-cum Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Pallavan Grama Bank, Head Office, and their workmen, received by the Central Government on 13.01.2014.

[No. L-12012/07/2011-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 13th December, 2013

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 46/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Pallavan Grama Bank and their workman)

BETWEEN

Sri S. Saravanan : 1st Party/Petitioner

AND

The Chairman : 2nd Party/
Pallavan Grama Bank, Head Office Respondent
No. 6, Yercaud Road
Hasthampatti
Salem-636007

Appearance:

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates

For the 1st Party/Respondent : M/s. L. Jayakumar & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-12012/07/2011-IR(B-I) dated 03.06.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Pallavan Grama Bank in not allowing Sri S. Saravanan, Ex-Sweeper-cum-Messenger, to continue to work in terms of the appointment and posting order, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 46/2011 and issued notice to both sides. Both sides have entered appearance through their respective counsel and filed Claim and Counter Statement respectively. The First Party has later filed a rejoinder.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The First Party was engaged as Sweeper-cum-Messenger on daily wages at Dharmapuri branch of the Respondent Bank and was working in this capacity from 1994. Later he was acting as Driver also. By order dated 31.12.2008 the Second Party absorbed the First Party into its permanent service as Sweeper-cum-Messenger. The First Party was to be on probation for one year, as per the order. A posting order was issued to the First Party and in compliance with the order the First Party has joined duty at the Head Office at Salem on 13.09.2009. On 30.01.2009, the First Party was instructed to submit his original order of appointment and the posting order to the Chairman to carry out some correction. After the First Party has submitted the above orders, the Chairman told him that he need not report for duty until further orders. He was assured that he would be taken back in service within a short time. However, nothing was heard from the Second Party even after 8 months. The First Party had caused to issue a notice to the Second Party claiming reinstatement in service. Since he was not taken back in service even after this, the First Party has raised dispute before the Labour Commissioner, Chennai. The stand of the Second Party before the Labour Commissioner was that the order of appointment was given to the First Party without any authorization or approval of the sponsor bank who is having administrative control over the Second Party Bank. The action of the Second Party in disengaging the First Party from service is arbitrary, illegal and unjustified. The First Party had worked continuously for more than 15 years with the second party. While terminating his service, the First Party was not given the prescribed notice. His termination is in violation of Section-25F of the Industrial Disputes Act. The First Party is entitled to be reinstated into service of the Second Party with back wages, continuity of service and all other attendant benefits.

4. The Second Party has filed Counter Statement contenting as follows:

The Second Party came into being on 31.08.2006 by merger of Adhiyaman Grama Bank and Vallalar Grama Bank, two rural banks. The Second Party is sponsored by the Indian Bank. It is true that the First Party was engaged as a casual labourer to render odd services and run sundry errands of and on, during the past years. However, it is incorrect to state that he was engaged as Sweeper-cum-Messenger initially and then as Driver in the Head Office of the Second Party continuously from 1994. The Chairman of the Second Party has taken a sympathetic view of the conditions of the First Party and has issued a provisional order of appointment to the First Party. But while doing so, he has failed to follow the statutory procedures under the Pallavan Grama Bank (Officers and Employees) Service Regulations, 2007. As per Regulation no. 4 of the above the Chairman can appoint persons in consultation with the sponsor bank and that also on casual basis for a period not exceeding 90 days. So, the letter conveying the provisional

selection was withdrawn by the Second Party. However, the Second Party has offered engagement as casual labourer to the First Party. But the First Party refused to accept it and failed to turn up for work. Since the provisional selection itself was not valid, there was no question of termination of service of the First Party. The First Party is not entitled to any relief.

5. After the Second Party has filed Counter Statement, the First Party has filed a rejoinder denying the averments made therein.

6. The evidence in the case consists of the oral evidence of WW1 and MW1 and documents marked as Exs. W1 to Ex.W11 and Exs. M1 and Ex. M2.

7. **The points for consideration are:**

(i) Whether the action of the Second Party in terminating the services of the First Party is legal and justified?

(ii) What is the relief to which the First Party is entitled?

The Points

8. The First Party has given Proof Affidavit reiterating his case in the Claim Statement. He has been cross-examined by the Second Party. The Second Party in its turn has examined one of its Senior Manager on its behalf.

9. The facts of the case are not very much in dispute. It is the case of the First Party that he was engaged as casual labourer in the service of the Second Party Bank. Though, the case of the First Party that he used to be engaged by the Second Party from the year 1994 is not admitted by the Second Party in its Counter Statement, the very Counter Statement states that the First Party was engaged for several years continuously, though, nothing is stated in the Counter Statement about the claim of the First Party that at the later stage he was engaged as Driver also, the documents produced would show that he was given payment in this capacity as well. Again, Ex.W7, the details given by the Second Party to the First Party on application under Right to Information Act reveals engagement of the First Party by the Bank at least from October 2001. So it is very much clear that the First Party has been in the service of the second Party for several years continuously.

10. The case of the First Party is that after such continuous engagement for several years as a casual labourer, the Second Party had given him a permanent appointment as Sweeper-cum-Messenger, by order dated 31.12.2008. This case of appointment of the First Party as Sweeper-cum-Messenger is admitted by the First Respondent also. The documents pertaining to this are produced by the First Party as well. Ex.W1 is the order recruiting the First Party as Sweeper-cum-Messenger. By Ex.W2 order dated 12.01.2009 he was given posting at the Head Office at Salem. He was asked to report for duty on 13.12.2009. Accordingly, the First Party has joined duty. This is also not in dispute.

11. It is the case of the First Party that after he has joined the Head Office at Salem on 13.01.2009 in compliance with Ex.W2 order, he has worked here till 30.01.2009. On this date he is said to have been instructed to hand over the appointment and posting orders to the Chairman who on receipt of these is said to have asked him not to report for duty until instruction from him.

12. It is clear that the First Party was not given any order cancelling his appointment. Ex.W6 the reply received by the First Party on application under the Right to Information Act states that the appointment order was issued to him without approval by the sponsor bank and in violation of Government of India guidelines and therefore the order was withdrawn and he was paid wages applicable to casual labourers for the number of days he had worked after his appointment. The details of payment for utilizing his service as Driver by the Chairman also are given in Ex.W6. The stand of the Second Party in its Counter Statement also is that the order of appointment is without any authority since the appointment was made without consultation by the sponsor bank. A reference is made to Regulation No. 4 of Pallavan Grama Bank (Officers and Employees) Service Regulation which stipulates that the Chairman in consultation with the sponsor bank may appoint persons in Group "C" on casual basis for a period not exceeding 90 days.

13. The Counsel for the First Party has referred to the decisions of the Apex Court to content that once a person has been taken in service, he could not be thrown out unceremoniously in such a manner. The counsel has referred to K.L. SHEPHERD AND OTHERS *VS.* UNION OF INDIA AND OTHERS reported in AIR 1988 SCC 686 in this respect. It was a case where on amalgamation of three banks, certain employees were excluded from employment by the transferee banks. The Apex Court has held that there was no justification to throw them out of employment and then give them opportunity of representation when the requirement is that they should have got opportunity of representation as a condition precedent to the action. The Apex Court has found that the rules of natural justice apply to administrative actions also. The counsel has also referred to the decision SHRAVAN KUMAR JHA AND OTHERS *VS.* STATE OF BIHAR AND OTHERS reported in AIR 1991 SCC 309 also. It was a case where appointment of certain persons as Teachers has been cancelled. The Apex Court has held that the affected persons should have been given opportunity of hearing before cancelling their appointments. The Apex Court also found that no order to the detriment of the employees should have been passed without complying with the rules of natural justice. The cancellation order was set aside for the very reason.

14. It is a case where the First Party had worked with the Second Party as a casual labourer for several years and

in recognition of his service as a casual labourer the Second Party had absorbed him in its service by appointing his as a permanent employee. Of course, the case of the Second Party is that the appointment of the First Party was provisional in nature and he was in probation for a period of one year. The stand of the Second Party seems to be that it is entitled to terminate the service of the First Party for no reason during the period of probation. Such a stand of the Second Party is an erroneous one. Only because the appointment is to be confirmed only on expiry of the period of probation, it does not mean the employer is entitled to terminate his service during the period of probation for no reason and for no fault of the employee. A person is put on probation in his employment only to watch his performance as an employee, to see that he is capable of doing the duties and responsibilities put on him as an employee. The employer is not expected to take advantage of the provision of probation to throw out the employee from service without any reason. In fact a period of probation is with reference to the performance of the employee in his employment. So just because he was on probation, the First Party could not have been thrown out on the ground that his appointment was not in order.

15. In any case in the light of dictum laid down by the Apex Court in the judicial pronouncement referred to earlier, the Second Party was not at all justified in terminating the services of the First Party without specifying any reason. It is clear that no order of termination has been given to the First Party. His service was discontinued orally. This is in total violation of the principles of natural justice. The First Party has earned his employment by working with the Second Party as a casual employee for several years together. He is entitled to be reinstated into service.

16. The First Party has stated that after he was turned out from service, he was not gainfully employed anywhere. This case of the First Party as given in his Proof Affidavit is not challenged by the Second Party. In the circumstances, I find that the First Party is entitled to half the wages he would have been entitled to as a permanent Sweeper-cum-Messenger in the service of the Second Respondent. The Second Party is liable to pay this amount also to the First Party. The First Party is entitled to continuity of service and other attendant benefits also.

17. Accordingly, the Second Party is directed to reinstate the First Party in service within one month with 50% back wages from the date of termination, and continuity of service with other attendant benefits.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th December, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Sri S. Saravanan
For the 2nd Party/Management	:	MW1, Sri R. Karunakaran

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	31.12.2008	Appointment Order issued to the First Party by the Second Party
Ex.W2	12.01.2009	Office Order issued by the Second Party giving posting to the First Party
Ex.W3	28.10.2009	Petition filed before the Asstt. Labour Commissioner (Central), Chennai
Ex.W4	03.03.2010	Remarks filed by the Second Party before the Asstt. Labour Commissioner (Central), Chennai
Ex.W5	03.12.2010	Rejoinder filed by the First Party before the Asstt. Labour Commissioner (Central), Chennai
Ex.W6	09.12.2009	Information furnished by the Information Officer of the Second Party Bank
Ex.W7	15.02.2010	Letter from Public Information Office of the Second Party Bank furnishing information
Ex.W8	03.04.2010	Information furnished by the Information Officer of the Second Party bank
Ex.W9	03.04.2010	Information furnished by the Information Officer of the Second Party Bank
Ex.W10	1994	Wage receipts for the month of August, September and October, 1994
Ex.W11	09.12.2009	Information sought under Right to Information Act.

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	Pallavan Grama Bank (Officers and Employees) Service Regulations 2007
Ex.M2	29.07.1998	Gazette of India Notification

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 350.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधतंत्र के संबद्ध नियाजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट संदर्भ संख्या 55/2011 को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/75/2010-आईआर(बी-I)]
सुमति सकलानी, , अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No. 55/2011 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of the HRMG, ICICI Bank Ltd., 4th Floor, 24 South Phase, Regional Office, 8/4 Siema Building, Race Course, and their workman, received by the Central Government on 13/01/2014.

[No. L-12012/75/2010-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 18th December, 2013

Present: K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 55/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of ICICI Bank Ltd. and their workman]

BETWEEN

Sri S. Mohammad Hussain : 1st Party/Petitioner

AND

1. E.R. Manager : 2nd Party/1st Respondent
   HRMG, ICICI Bank Ltd.
   4th Floor, 24 South Phase
   Ambattur Industrial Estate,
   Ambattur, Chennai-58
2. The Regional Head 2nd Party/2nd Respondent
   ICICI Bank Ltd,
   Regional Office
   8/4, Siema Bldg.,
   Race Course
   Coimbatore-641016

Appearances :

For the 1st Party/Petitioner : M/s S. Ravi, T. Ramkumar, Advocates

For the 2nd Party/1st and 2nd Management : M/s S. Ramasubramaniam & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/75/2010-IR (B-I) dated 27.05.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of ICICI Bank Ltd. in termination services of Sri S. Mohammad Hussain w.e.f. 12.10.2009, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 55/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner has joined the service of ICICI Bank Ltd. on 03.03.2008. The petitioner was placed under probation for one year and was confirmed in the service of the bank having completed the probation period satisfactorily. Though the petitioner was designated as Officer, the duty assigned to him was neither managerial nor supervisory. He has no power to appoint or dismiss an employee or take disciplinary action against an employee. So the petitioner is a workman coming within the meaning of Section 2(s) of the Industrial Disputes Act. The management has issued a memo dated 14.05.2009 to the petitioner calling for explanation from him for certain allegations. The petitioner had given an explanation denying the allegations made against him. However, to the surprise of the petitioner, the management had issued order of termination dated 12.10.2009 on the petitioner. After this, the petitioner had repeatedly approached the Respondents asking them to reinstate him in service. However, they have refused to comply with this request. The termination of the petitioner amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. The petitioner was not issued any notice nor was given any compensation before he was terminated from service. The Management had not initiated domestic enquiry to prove the allegations against him. He was not afforded any opportunity to produce evidence in respect of the allegations against him and to disprove the same. The termination of the petitioner is illegal and without any justification. The petitioner is entitled to be reinstated in service with back wages, continuity of service and attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

The petitioner joined the service of the ICICI Bank on 03.03.2008 in the cadre of Officer. It is incorrect to state that the work assigned to the petitioner was not managerial or supervisory. While the petitioner was working as an Officer in Idappadi branch, he has misappropriated a sum of Rs. 500/- belonging to bank customer. In addition to that he had committed serious error in jewel loan transaction also. A Charge Memo was issued to the petitioner on 04.05.2009 calling for him explanation for the allegations made against him. He had submitted explanation admitting the allegations. Since the petitioner has indulged in serious misconducts he was terminated from service by letter dated 12.10.2009. The petitioner is not entitled to any relief.

5. The evidence in the case consists of the evidence of WWI and MWI and documents marked as Exs. W1 to Ex.W3 and Exs. M1 to Ex.M9.

6. *The points for consideration are:*

(i) Whether the termination of service of the petitioner from the service of the ICICI Bank Ltd. is legal and justified?

(ii) Whether the petitioner is entitled to reinstatement in service? If not what if any is the relief to which he is entitled?

The Points

7. The petitioner has admittedly joined the service of ICICI Bank on 03.03.2008. Ex.W1 is the order of appointment.

8. According to the petitioner though his appointment was as an Officer, his status in the bank is that of a workman only. He has stated that in spite of his posting as an "Officer", he had no managerial or supervisory powers. He has no power to appoint or dismiss employees or take disciplinary action against any employees. He has no power to write confidential report of an employee also. His work in the bank was clerical in nature.

9. In the Counter Statement, the Respondents have disputed the case that the petitioner was though posted as an Officer never had any powers of an Officer. However, it could be seen from the evidence given by the petitioner and also that of MW1, a Regional Head of the Management, that the work of the petitioner was not of the nature of an Officer. MW1 has stated during his cross-examination that the petitioner has no power even to sanction leave for other employees. He also admitted that the petitioner has no powers to take disciplinary proceedings against an employee also.On the other had he was expected to discharge his duties on the basis of instructions given by the Manager of the branch in which he is working and also in accordance with circulars. Thus it could be seen that the work of the petitioner was Clerical in nature, in spite of nomenclature given to his post as Officer. In fact no argument has been advanced by the counsel for the Respondents to the effect that the petitioner is not one who comes under the category of workman under Section 2(s) of the Industrial Disputes Act.

10. Ex. W2 is a letter given by the Assistant General Manager, a Human Resource Management Group addressed to the petitioner on 12.10.2009 terminating the petitioner from service. The letter states that the service of the petitioner is not required by the Bank and therefore his service is terminated with immediate effect in terms of contract of employment. There is no case for the Management that notice of termination has been given to the petitioner. There is also no case that compensation on account of termination has been given to him also. Though, in the Counter Statement the Respondents have got a case that the petitioner was terminated from service on account of his misconduct while he was working in Idappadi branch, there is no reference of any such misconduct in Ex.W2. It is not state in Ex. W2 that it is by way of punishment that the service of the petitioner was been terminated.

11. As referred to earlier the Respondents have set up a case in the Counter Statement that the petitioner has indulged in misconduct while he was working in Edapaddy branch. The allegation as seen from the Counter Statement is that he had misappropriated a sum of Rs. 500/- belonging to bank customer and had also committed serious error in jewel loan transation. Ex. M1 is the copy of the letter sent by the Management to the petitioner referring to the misconducts attributed to him. In this it is stated that on 24.01.2009, one Mathivanan, a customer of the bank had visited Edapaddy branch for depositing Rs. 20,000/- and while paying the amount for the deposit he had handed over 41 notes of Rs. 500/- denomination instead of 40 notes, but the petitioner who was the cashier did not inform the customer nor make any entry towards excess cash fund but retained the amount for more than a month. It is further stated that approvals were given for passing cash entries of Rs. 1.00 crore jewel loan without supporting documents Ex.M2 is the reply given by the petitioner. In this the petitioner has admitted to have received excess cash of Rs. 500/-. He has stated that it was because of his negligence he failed to make entry that he had tried to contact the customer when he found out that he had excess cash and had also informed Vijaya Sankar, his colleague. According to him he had tried to get the mobile number of the customer but he had not succeeded. Later he had gone to the house of the customer and had returned the amount to him. Regarding Jewel Loan issue he has stated that the Branch Manager was utilizing his innocence.

12. Even though, by Ex.M2 reply the petitioner has pleaded innocence and has explained under what circumstances, the incidents resulting in allegations against him occurred, the Management has not conducted a

domestic enquiry against him. Of course there is a claim in the Counter Statement that a Charge Memo was issued to the petitioner and an enquiry was also conducted. But the document that is referred to in the Charge Memo is Ex.M1, the notice issued to the petitioner calling for explanation. Ex.M9 is produced as investigation report regarding the matter. MW1 has stated that he has prepared the report. However, Ex.M9 does not contain the name of the person who investigated. The signature of the person or the name of the person who prepared the report also are not there. On a perusal of Ex.M9 it could be seen that this is only a report on a routine visit made by a superior officer to the branch and has nothing to do with enquiry on the allegations made against the petitioner.

13. Probably aware of the lacuna in the case due to the absence of conduct of a domestic enquiry, the Respondents have stated in the Counter Statement that the Management may be allowed to let in evidence to establish the acts of misconducts of the petitioner without prejudice to the case that the petitioner had admitted the acts. It is in the attempt to establish the allegations against the petitioner that MW1 has been examined on behalf of the Respondents.

14. Before dealing with the evidence, it is to be referred to that the respondents have not even specifically stated in the Counter Statement what actually are the charges against the petitioner. There is a vague reference in the Counter Statement that the petitioner had misappropriated Rs. 500/- belonging to a bank customer. It is further stated that in addition to this he had committed serious error in jewel loan transaction also. The details of the allegations are not given in the Counter Statement. Rather than doing this, Ex.M1 is extracted in the Counter Statement describing it as a Charge Memo.

15. Even now the attempt of the Management is to treat Ex.M2 as admission made by the petitioner regarding the misconducts alleged against him. MW1 examined on behalf of the Respondents has nothing to do with the acts of misconduct alleged against the petitioner except that he has purportedly given Ex.M9 report. The case that is alleged against the petitioner is that even though he has received excess amount of Rs. 500/- he has failed to report it to the superiors and return it to the customer. What is stated in the Counter Statement is that only when the customer made an oral complaint to the Bank the petitioner returned the same. As already referred to the case in Ex.M2, the explanation given by the petitioner is that immediately he had reported the matter to Vijay Shankar, an Officer. It could be seen from Ex.M9 report that MW1 himself had been aware that the matter was not kept discreet by the petitioner but he has informed of the same to the other Officer of the bank. What is stated in the report is that it is the petitioner who has found out that there were 41 notes instead of 40 notes Rs. 500/- denomination and he had asked Mr. Vijaya Shankar to follow up with the customer for confirming the same. Thus it could be seen that there was no concealment on the part of the petitioner at all. Again, there is no case even for the Respondents that the petitioner did not return the amount. The case is that the retained it for than a month before returning it. The case of the petitioner is that the particular customer could not be contacted as his phone number was not available and consequently the petitioner had visited the customer at his house and had returned the amount. It is the management who is alleging misconduct on the petitioner to prove his case. However, the particular customer has not been examined in this respect. There is nothing to show that he made any complaint before the amount was returned.

16. The counsel for the Respondents has made an attempt with reference to Ex.M5 and Ex.M6 to prove the Mathivanan, the particular customer had visited the bank twice within one month before the petitioner had returned the amount. According to the counsel this would prove that the case of the petitioner that he was not able to contact the customer during the period is not correct. Ex.M5 and Ex.M6 are pay-in-slips in the name of Mathivanan for deposit of amount in the Bank. These documents have been put to the petitioner during his cross-examination. Showing Ex.M5 to the petitioner it was extracted from him that the statement in Ex.M2 that he waited for a month but the customer did not come to the bank is not correct. When Ex. M6 was put to the petitioner, he has stated that the handwriting in the documents is that of Mathivanan and that the signature in that is of his colleague. He was not able to identify the signature in the space of signature of depositor. The argument of the counsel of the Respondent is that Exs.M5 and Ex.M6 would categorically reveal that the customer had been to the bank twice within one month after excess amount was received. However, these two documents certainly would not show that it was the customer himself who had been to the bank to deposit amount in his name. The deposit could have been made by someone else on behalf of the customer. MW1 has stated that by looking at Ex.M6 he could not say who passed it. He has further stated that for making cash deposit a customer or his representative could come to the bank. He has stated that he could not say if Mathivanan has been to the Bank on 24.02.2009 for depositing amount. Same must be the case on 29.01.2009 the date of Ex.M5 also. The only person who could have stated specifically about this, apart from the concerned Officer who signed Ex.M5 and Ex.M6 is Mathivanan, the customer himself. The Management has not though it necessary to examine him to prove that he had been to the bank twice before the petitioner had returned the amount to him. Thus it could be seen that the attempt of the Respondents to show that the customer had been to the bank and yet the petitioner had not returned the amount has not succeeded. The Management has not proved that the petitioner has deliberately and willfully

retained the excess amount of Rs. 500/- and utilized the same by himself and thereby committed the misconduct alleged.

17. So far as the allegation that an error was committed in jewel loan transaction is concerned, it is not even attempted to be established. The explanation given by the petitioner in Ex.M2 could not be treated as admission on his part of commission of the misconduct alleged against him. On the other hand what he has stated is that at the time of inspection he had made a complaint regarding this and they had enquired about this to the Branch Manager and he had accepted his fault. Ex.M9 does not accuse to the petitioner for jewel loan sanction without approval. On the other hand what is stated is that the sanction was given by the Branch Manager without approval from the competent authority. Thus apart from the fact that the charges are not specific, those are not established by the Respondents also.

18. The counsel for the Respondents has placed before me a plethora of judicial pronouncements by the Apex Court to the effect that an Officer of a bank is required to exercise higher standards of honesty and integrity and in the absence he is not entitled to continue in service. However, the Respondents having failed to establish the case against the petitioner, these are not relevant. In the very decision referred to by the counsel for the Respondents, MICHAEL AND ANOTHER VS. JOHNSON FARMS LTD. reported in AIR 1975 SCC 661 it is held that in the absence of substantial material termination from service was not bonafide and workman has to be reinstated with back wages. The Respondents having failed to establish the case against the petitioner the petitioner is entitled to be reinstated in service.

19. The petitioner has been in the service of the Respondents for 20 months. He was unceremoniously turned out from work by way of termination from service without conducting any enquiry. He was not given any notice of termination nor was he given any compensation as contemplated under the Section-25(F) of ID Act. The petitioner has given evidence that after he was terminated from service he was not gainfully employed. The salary of the petitioner at the time of termination was more than Rs. 20,000/- Considering this, I assess the compensation payable to the petitioner in lieu of reinstatement as Rs. 5.00 lakhs. The Respondents has the option either to take back the petitioner in service or to pay him compensation of Rs. 5.00 lakhs.

20. Accordingly, the Respondents are directed to reinstate the petitioner within one month with 25% of back wages and also continuity of service and other attendant benefits. In the alternative the respondents are directed to pay Rs. 5.00 lakhs to the petitioner as compensation with one month.

The reference is asnswered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th December, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner	:	MW1, Sri S. Mohammad Hussain
For the 2nd Party/Management	:	MW1, Sri S. Srikanthan

Documents Market:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	29.12.2007	Order of appointment issued to the petitioner
Ex.W2	12.10.2009	Order of termination issued to the petitioner by the respondent management
Ex.W3	27.05.2011	Reference for adjudication issued by the Government of India, Ministry of Labour

On the Management's side

Ex.M1	14.05.2009	Copy of the letter sent to S. Mohammad Hussain seeking explanation to the charge against him
Ex.M2	22.05.2009	Copy of the explanation letter sent by S. Mohammad Hussain
Ex.M3	30.12.2009	Copy of the petition filed by the petitioner before ALC
Ex.M4	09.04.2010	Copy of the counter statement filed by the Respondent before ALC
Ex.M5	29.01.2009	ICICI Bank Savings Bank Pay-in-Slip for Rs. 20,000/-
Ex.M6	24.02.2009	ICICI Bank Saving Bank Pay-in-Slip for Rs. 20,000/-
Ex.M7	27.12.2009	SB Account Statement of Sri K. Mathivanan from 01.01.2009 to 30.06.2009
Ex.M8	30.01.2013	Relevant extract from the master circular dealing with how to handle excess cash
Ex.M9	—	Investigation Report

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 351.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट संदर्भ संख्या 22/2012 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/12/2012-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 22/2012 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Southern Railway, and their workmen, which was received by the Central Government on 13/01/2014.

[No. L-41011/12/2012-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 19th December, 2013

Present : K.P. PRASANNA KUMARI

Presiding Officer

Industrial Dispute No. 22/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Southern Railway and their workman)

BETWEEN

The President : 1st Party/Petitioner Union
Socialist Labour Union
29/4, K.M.P. Koil Street
Ayanavaram
Chennai-600023

AND

The Divisional Railway Manager : 2nd Party/
Southern Railway Respondent
Chennai Division
Chennai-600003

Appearance:

For the 1st Party/ Petitioner Union : M/s S. Bhathavatsalam, Authorised Representative

For the 1st Party/ Respondent : M/s K. Muthamil Raja, Advocate

AWARD

The Central Government, Ministry of Labour & Employment, *vide* its Order No. L-41011/12/2012-IR (B-I) dated 23.03.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of Union, Socialist Labourer Union, Chennai, for payment of notice pay, difference of wags, compensation, terminal pension, leave benefits and other consequential benefits to the thirteen workers namely (1) Yesodha (2) Agilandam (3) Dhanalakshmi (4) Yegavalli (5) Kuppa (6) Ponnammal (7) Perianayagam (8) Govindammal (9) Chellammal (10) Ammani Ammal (11) Rani Ammal (12) Irusammal & (13) Annakili who were retrenched from service w.e.f. 31.05.1980 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 22/2012 and issued notice to both sides. The petitioner has entered appearance in person and the Respondent through its counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement in brief are as below:

The women Khalasis by name Yesodha, Akhilandam, Dhanalakshmi, Yegavalli, Kuppa, Ponnammal, Perianickem, Govindammal, chellammal, Ammaniammal, Raniammal, Irusammal and Annakili who were members of the Socialist labour Union of which the petitioner is the President were engaged as Khalasis by the Respondent in ash pit for cleaning and cinder picking work in the Loco Shed under the Mechanical Department of Southern Railway at Basin Bridge. These women were paid based on quantity of cinder picked by them. They are deemed to be permanent employees on completion of 240 days work, as contemplated under the Industrial Disputes Act. Wages for these women were paid from the Central Government fund of Southern Railway Administration, Madras Division. These women were serving the Railway continuously for more than 21 years. They were retrenched from service on introduction of electrification system in the Railway. These women were paid gratuity but denied pension in violation of Railway Pension Rules. They were given wages on the basis of Contract Labour Central Rules, 1971 and awards announced by the Central Pay Commission. But difference in back wages were not paid to them. There may be an

order directing the Respondent to pay the above Khalasis difference in back wages and statutory benefits upto the date of their superannuation on 31.12.2000 since they were not gainfully employed from the date of retrenchment to the date of superannuation.

4. The Respondent has filed Counter Statement contending as follows:

The petition is not maintainable either in law or on facts. The 13 persons referred to in the Claim Petition have filed Claim Petition No. 16 and 17 of 1982 before the Central Government Labour Court claiming about Rs. 50,000/- under various heads. These petitions were dismissed finding that they were not directly employed under the Railway Administration and there is no employer-employee relationship between them and the Railway. They have preferred appeal before the High Court Madras and the case has been remanded to the Labour Court. The Labour Court, on fresh consideration of the cases has dismissed the petitions by order dated 08.06.1999. Yesodha,one of those referred to in the Claim Petition raised Industrial Dispute before the Labour Conciliation Officer and the Conciliation Officer gave a failure report. Consequently, the Ministry of Labour issued order stating that the dispute is not fit for adjudication. She filed a Writ Petition challenging this. This is still pending before the High Court of Madras. The Legal Heirs of Dhanalakshmi, Annakili, Irusammal and Yegavalli named in the Claim Petition field Claim Petition Nos. 35/2000 and 38 to 40/2000 respectively before the Labour Court and these were dismissed by a common order on 28.02.2007. Another Claim Petition Numbered as 28/2000 filed by 9 of the 13 persons referred to in the Claim Statement also was dismissed by the Labour Court on 28.11.2005. A claim application filed by them before the authority under the Minimum Wages Act and numbered as 12/11 was dismissed by order dated 05.10.2011. The claims having been already adjudicated, the present dispute is hit by the principle of resjudicata. The Southern Railway was owning steam locos until 1980s. Contractors were engaged by Railways to clear the cinders which were found in the ash pits and around the yard. The workers who did the work were paid by the Contractors depending upon the number of baskets of cinders picked up daily. The Contract for the work was awarded each year. The 13 workers named in the Claim Statement were engaged by Railway Labour Contract Society, a Contractor which was engaged by the Railways from the year 1964. The Railway administration had dieselized the Railways and consequently steam locos were withdrawn from operation in a phased manner. The Loco Sheds were also closed in the years 1981 and 1982 in phased manner. The Cooperative labour contract society Ltd. was given notice terminating the contract. As per the terms of the contract, compensation was paid to the Society by the Railway Administration for the remaining period. The 13 workers were among the piece rate workers engaged by the Contractor for picking up ash and cinder. They were not issued with any appointment order by the Railway. They were not even casual labourers or temporary workers of the Railway. They were not enjoying any of the benefits enjoyed by railway servants. The petitioner is not entitled to any relief on behalf of the workers named in the Claim Petition.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ex. W1 to Ex. W9 and Exs. M1 to Ex. M6.

6. **The points for consideration are:**

(i) Whether the claim in the petition is barred by the principal of resjudicata?

(ii) Whether the 13 persons named in the Claim Petition are entitled to notice pay, difference of wages, compensation, terminal pension, leave benefits and other consequential benefits as claimed in the petition.

(iii) What if any is the relief to which the petitioner is entitled?

Point No. 1

7. The petitioner, in his capacity as President of Socialist Labour Union has raised the dispute on behalf of 13 women workers who were engaged in cinder picking work at the Railway Yard of the Southern Railway at Basin Bridge. The case that is advanced by the petitioner is that the 13 workers named in the reference by the Government and in the Claim Petition are to be deemed to be permanent employees of the Railway as they completed of work of 240 days in the Calandar Year as contemplated under Section 25(B)(2) of Industrial Disputes Act. It is stated in the Claim Statement that their wages were paid by the Central Government Expenditure Fund for Southern Railway Administration. It is further stated in the Claim Petition that they were retrenched by the Railway without paying notice pay, compensation, etc. and therefore they are entitled to back wages until 31.12.2000, the date on which they would have retired on superannuation.

8. The respondent has filed Counter Statement contending that the issue raised by the petitioner before this Tribunal has been raised earlier at different forums and were answered against the workers on whose behalf the dispute is raised and those decisions have become final and therefore the present, case is hit by the principle of resjudicata.

9. On going through the documents produced on behalf of the Respondent it is seen that the matter has been previously agitated at different formus and were answered against the concerned workers. Ex. M1 is the order in the Writ Petition filed by the concerned workers challenging the order in CCP 16/82 and CCP 17/82 on the file of Principal Labour Court, Madras. The Hon'ble High

Court has remanded the matter back to the Labour Court for considering the matter afresh. Ex. M2 is the copy of the combined order of the Central Government Labour Court, Chennai in CP 16/82 and 17/82. It could be seen on going through the order that they have claimed amount towards difference between daily rates paid to them and monthly wages, retrenchment compensation and gratuity from the Railway. On considering the contention of these workers, the Labour Court has found that they are not Railway Servants and are not governed by the Railway Establishment Manual and so the Railway is not liable to pay the benefits claimed by them. Ex. M5 is the copy of the common order in CCP 35/2000 filed by the Legal Heir of Dhanalakshmi, CCP 38/2000 filed by the Legal Heir of Annakilli, CP 39/2000 filed by the Legal Heir of Irusuammal and CCP 40/2000 filed by the Legal Heir of Ekavalli claiming difference in wages under the provisions of the Equal Remuneration Act, pensionary benefit from the date of retrenchment till the date of death of the concerned worker and family pension for the Legal Heirs, before the Central Government Labour Court, Chennai. By the common order, the Court has found that the workers referred to in the petitions were not the workers of Railway and therefore they are not entitled to any relief from the Railway. Ex. M6 contains the order of the authority under the Minimum Wages Act in Claim Application no. 12/2011 filed by Yasodha and 12 Others represented by the President of Socialist Labour Union itself claiming wages under Minimum Wages Act under the Railway. This also is seen dismissed. Thus, it could be seen that each and every benefit claimed in the present petition has been claimed by the concerned workers at different forums earlier and were answered against them in all those formus. Those decisions have become final also. The issue having been decided earlier, the present claim is barred by principle of resjudicata.

Points (ii) and (iii)

10. Point No. 1 having been found against the petitioner, the petition is liable to be answered against the petitioner on that ground itself. However, in spite of this I am proceeding to consider the claim on merits also.

11. The case is that the workers referred to in the Claim Petition were workers of the Railway and were directly paid by the Railway. In spite of this claim, no documents are produced to prove this case. Ex. W1 is only a notification by the Railway Board regarding progress made under contract or departmental labour in respect of reclamation and utilization of cinder, etc. Ex. W2 is also regarding this. Ex. W5 is a letter from the Southern Railway which would show that even in 1981, the stand of the Railway was that the work of cinder picking was being done by the labourers of Cooperative Labour Contract Society. Ex. W8 is regarding utilization of surplus staff on closure of Steam Loco Sheds. Ex. W9 is a direction for payment of gratuity to a worker. The order directing payment of gratuity is also attached to Ex. W9. In this order itself it is stated that the worker who is the applicant is not a Railway Servant. No document has been produced by the petitioner to prove that the workers named in the Claim Petition were directly employed by the Railway. So in any case, no relief could be granted on the basis of the claim in the petition.

12. In view of my findings on Points (i) to (iii), the petitioner is not entitled to any relief.

The reference is answered against the petitioner.

(Dictated to the P.A., transcibed and typed by him, corrected and pronounced by me in the open court on this day the 19th December, 2013)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union	:	WWW1, Sri S. Bhakthavatsalam
For the 2nd Party/Management	:	None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex. W1	08.05.1957	Railway Board Order No. 57/116/8/Coal Direction to appoint departmental labour for Cinder picking works in Railways
Ex. W2	04.07.1957	Railway Board Order No. 57/116/8/Coal Direction to utilize cinder picked for use of Railway purposes.
Ex. W3	11.11.1980	Recognized Union Letter No. ESC/50 addressed to CPO Southern Railway to extend the benefits to women Khalasis.
Ex. W4	11.08.1981	Recognized Union Letter No. ESC/86 demanding minimum wages for women khalasis based on agreement reached with General Manager, Southern Railway, item No. 26 of 18 and 19.05.1981
Ex. W5	21.09.1981	Division Railway Manager Letter No. MM/TT/65/1/Vol. III addressed to General Manager giving particulars of payment made to the workers

Ex. W6	19.05.1981	Copy of Agreement reached between Union and General Manager
Ex. W7	13/16.11.1981	Letter No. P(L)/363/P. Vol. V addressed to Divisional Railway Manager to contact Additional Legal Adviser and submit results
Ex. W8	21.04.1989	Railway Board E.No. 106/89 direction to absorb surplus staff in alternative post having affected by diesalisation in Railways
Ex. W9	26.03.1997	Copy of Award No. M.48(36)/94/D2 passed for a sum of Rs. 12,115.38 towards the payment of Gratuity for each worker

On the Respondent's side

Ex. No.	Date	Description
Ex. M1	10.12.1998	Order passed in WP No. 4767/1990
Ex. M2	08.06.1999	Order passed in CP No. 16 & 17/1982
Ex. M3	17.12.1999	Failure report to Yesodha
Ex. M4	31.08.2012	Order passed in WP No. 29245/2002
Ex. M5	28.02.2007	Order passed in CCP No. 35/2000 and 38 to 40/2000
Ex. M6	05.10.2011	Order passed in C.A. No. 12/2011

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेलवे कोनटैक्टर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण गुवाटी के पंचाट संदर्भ संख्या 41/2013 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/88/2011-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 41 of 2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of Railway Contractor, and their workmen, received by the Central Government on 13/01/2014.

[No. L-41011/88/2011-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present : Shri L.C. Dey, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 41 of 2013.

In the matter of an Industrial Dispute between:-

The Workman represented by the President/Secy. Asom Mozuri Srameek Union (A.M.S.U.), Bihara, Cachar, Assam.

-Versus-

The Management of M/s Railtrack Concrete Products Pvt. Ltd., (Railway Contractor), Bihara Railway Station, Cachar, Assam.

Date of Award: 27.12.2013

AWARD

1. This Reference has been initiated on an Industrial Dispute between the Management of M/s Railtrack Concrete Products Pvt. Ltd., Railway Contractor, and their workmen represented by the President/Secretary Asom Mozuri Srameek Union, on the ground of willful denial in giving at least @ 8.33% Bonus for the year 2009-2010 to their factory workers by the Management, which was referred by the Ministry of Labour, Government of India, New Delhi *vide* their order No. L-41011/88/2011-IR(B-I) dated 22.08.2013. The Schedule of this Reference is as under.

SCHEDULE

"Whether the willfull denial on the part of M/S Railtrack Concrete Products Pvt. Ltd. in giving at least @ 8.33% Bonus for accounting year 2009-2010 to their factory workers are justified? To what relief the factory workers are entitled?"

2. The fact of the case of the workmen of M/s Railtrack Concrete Products Pvt. Ltd., Railway Contractor, Bihara Railway Station represented by the President/Secretary, Asom Mozuri Srameek Union, Bihara, in brief, is that originally there were 50/60 workmen working in the Industry of M/s Railtrack Concrete Products Pvt. Ltd., (Railway Contractor), Bihara Railway Station, Cachar, which was increased to 165/170 in the year 2007 with the increase of the production. Thereafter a number of workmen decreased gradually to about 100 due to various reasons including the meager wages of the worker. Recently another group of

about 60 workmen joined the factory. In spite of various constraints and meager wages the workers have been working sincerely and as such, production increased day by day resulting in huge profits of the management from selling the products of the factory. The Assom Mojuri Shramik Union is the only Union representing of the workmen of the Management factory and it has been discharging its duties and obligation towards all concerned. The Management has been paying bonus each year to its ministerial staff since 2008 but refused to pay the same to the workmen inspite of persistent demands. The Management declared to pay ex-gratia to the workers but refused to pay any bonus, while the Union on behalf of the workmen refused to accept such offer of the Management. Then the Union raised the dispute before the Assistant Labour Commissioner (C), Silchar and on failure of conciliation the dispute was referred to by the Ministry. The Management is in different towards the workmen with respect to the ministerial staff who were getting increment year wise and also enjoying the bonus every year while the wages of the workers found below the notified minimum wages which had been hiked only after strong battle and negotiation each time. Subseqently during the year 2010-11, 2011-12 the Management did not pay any bonus to the workers and only in the year 2012-13 the bonus was given to the workmen @ statutory minimum bonus *i.e.* @ 8.33% of the wages earned by each worker. Thus the Management willfully denied to pay the bonus to their workmen for the period 2009-10, 2010-11 and 2011-12 @ 8.33% inspite of making huge profits by selling the only product produced by the workmen in the Management factory. Hence, the workmen prayed for a Award granting bonus @ 8.33% of their actual wages earned during the year 2009-10, 2010-11 and 2011-12 along with compensation/ interest and cost against the O.P./Management.

3. The Management appeared alongwith their Advocate but did not submit any written statement against the claim statement submitted by the workmen. Thereafter the reference has been put up before the Lok Adalat today.

4. In course of conciliation of this reference in the Lok Adalat, with the sincere, endeavour and initiative taken by the learned conciliators the dispute has been settled up amicably on the terms and conditions that the Management shall pay a sum of Rs. 1,70,000/- (One lakh Seventy thousand) to the workmen in full and final settlement of bonus for the period of financial year 2009-10 in 2 (two) equal installments, one before 10.3.2014 and the another before 20.4.2014 and the said amount shall be paid to the workmen as per their respective attendance for the said period.

5. In view of the above settlement this reference is disposed of on compromise. A Memorandum of Settlement is prepared and duly signed by both the parties along with the learned Conciliators and the Presiding Officer which is kept on record and it will form a part of the record as well as the Award.

6. Send the Award along with a copy of the memorandum of settlement to the Ministry as per law.

Given under my hand and seal of this Court on this 27th day of December, 2013, at Guwahati.

L.C. DEY, Presiding Officer

BEFORE THE LOK ADALAT IN RELATION TO THE CGIT-CUM-LABOUR COURT, KENDRIYA SHRAM SADAN, BIRUBARI, GUWAHATI.

Date:- 27.12.2013.

Ref Case/Misc Case No:- 41 of 2013

Management of M/s Railtrack Concrete Products. Pvt. Ltd.

-Vs-

Workmen, President/Secy. Asom Mozuri Srameek Union (AMSU).

May it please your honour,

We the parties above named have arrived at a compromise/conciliation/settlement in the above Referred Reference Case/Misc Case/dispute as per terms and conditions mentioned below. No coercion or force/ temptation/influence has been made to any of the parties to arrive at the compromise/conciliation.

We therefore request to record the compromise/ conciliation/settlement made before the Lok Adalat and pass order/award accordingly today itself.

Terms of compromise/conciliation. Settled on the terms and conditions that the Management shall pay a sum of Rs. 1,70,000/- (Rupees one lakh seventy thousand) to the workmen in full and final settlement of Bonus for the period of financial year of 2009-2010; in 2 (two) equal instalments, one before 10-3-2014 and another before 20-4-2014 and the said amount shall be paid to the workmen as per their respective attendance for the said period.

-Sd- illegible	-Sd- illegible
Signature of Management/ Opposite Party/ Respondent.	Signature of Union/ Workman/Petitioner/ Applicant.
-Sd- illegible	-Sd- illegible
Signature of Advocate for the Management/ Opposite Party/Respondent.	Signature of Advocate for the Union/ Workman/Petitioner/ Applicant.
-Sd- illegible	-Sd- illegible

Signature of conciliators.

Presiding Officer, CGIT-Cum-Labour Court, Guwahati.

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट संदर्भ संख्या 18/2002 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 प्राप्त हुआ था।

[सं॰ एल-41012/71/2001-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 18/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of The Sr. Divisional Electrical Engineer, (TRD), South and their workmen, received by the Central Government on 13/01/2014.

[No. L-41012/71/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/18/2002 Date: 13.12.2013.

Party No. 1 : The Divisional Railway Manager,
South Eastern Railway,
Kingsway, Nagpur-440001
Maharashtra

Versus

Party No. 2: Shri Sachin Singh Laxman,
S/o Laxman Singh Rathod,
Near Hanuman Mandir,
Shastri Nagar, Nagpur (Maharashtra)

AWARD

(Dated: 13th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Divisional Railway Manager, South Eastern Railway, Nagpur and their workman, Shri Sachin Singh Laxman, for adjudication, as per letter No.L-41012/71/2001-IR (B-I) dated 17.01.2002, with the following schedule:-

"Whether the action of the management of Divisional Railway Manager, South Eastern Railway, KingsWay, Nagpur in terminating from the job as Hot Weather waterman to Shri Sachin Singh Laxman w.e.f. 1988, onwards alongwith others enlisted employee in their circular dated 12.05.1988, is justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sachin Singh Laxman, ("the workman"in short), filed the statement of claim and the management of South Eastern Railway, Nagpur ("Party No. 1"in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he had worked as a Hot Weather Waterman in Nagpur Division in S.E. Railway from 16.04.1986 to 15.07.1986 and 03.05.1987 to 30.06.1987 for a total period of 150 days at Barkuhi Railway Station and for working at the station, orders were being given to him through the Commercial Inspector, Headquarters by way of provisional orders and the said orders were being taken by the respective Station Masters, for records and authority to draw salary and for working as such, no working certificate was given to him by the authority and at that time, there was a convention that only those casual labours/ candidates, whose names were being listed in the live register maintained in the office of D.P.O. S.E. Railway, Nagpur were to be engaged again and no fresh faces were being enlisted for appointment/engagement and in the year 1988, he was not given any order for work and he came to know from his colleagues that his name was enlisted at serial no. 15 with a direction to work at Tumsar Road under the P.W.I. Tumsar Road in the office order no. DPO/NGP/ CON/EMP/Asstt/88/HW dated 12.05.1988, issued by the DPO, SE Railway, Nagpur, but the said order was not communicated to him by any approved mode of communication, as a result of which, he could not able join his duty in the year 1988 and thereafter, no further order was received from the party No. 1 and he was also not given opportunity of service in the future year, as per procedure and Rules and due to deprivation of such job opportunity, he met the DPO, Nagpur in 1989, 1991 and 1993 in person, besides submitting written representations dated 06.01.1990, 10.12.1994, 07.04.1995, 20.03.1996, 26.02.1997, 21.09.1998, 28.12.1998 and 25.02.1999 to the different authorities of Party No. 1 and lastly, he also sent pleader's notice dated 31.05.1999 for his engagement in the job, but the Party No. 1 remained deaf and dumb and the appearance of his name in the order dated 12.05.1988 itself shows that he had worked previously, in absent of which, his name should not have been mentioned in the list.

Prayer has been made by the workman for his appointment in suitable post and cadre and for all other consequential benefits.

3. The Party No. 1 in written statement has pleaded *inter-alia* that as the workman has not submitted any document in support of his claim that he worked at Barkuhi

Station from 16.04.1986 to 15.07.1986 and 03.05.1987 to 30.06.1987 as Hot Weather Waterman, his claim cannot be entertained and new faces were not being engaged as casual labourer, without the prior approval of the General Manager and the order dated 12.05.1988 was properly displayed in the notice board in the place of positing *i.e.* at SS'Kamptee, but the workman failed to report for work and as per extent rules, there was no provision of sending or serving the order in the home address of the candidate and the order dated 12.05.1988 was not an offer of appointment against open market recruitment, but was an order for engagement of Hot Weather Staff and as per its records, the notice dated 31.05.1999 from advocate, Shri Rajesh Tripathi was received on 07.06.1999 and as there was no records in the office regarding the engagement of the workman and the workman failed to produce any evidence of his working as Hot Weather Waterman during 1986-87, the conciliation proceedings failed and the workman is not entitled to any relief.

4. The workman has examined himself as a witness in support of his claim, besides placing reliance on documents. In his examination in chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. The workman has also proved the copies of representations and the advocate's notice and other documents as Exts. W-7 to W-25 respectively.

In his cross-examination, the workman has admitted that he has not filed any document to show that he had worked as a Hot Weather Waterman from 16.04.1986 to 15.07.1986 and 03.05.1987 to 30.06.1987.

5. One Shri Prashant Tulsiram Naik has been examined as a witness on behalf of the Party No. 1. The evidence on affidavit of this witness is also in the line of the stands taken by Party No. 1 in the written statement.

In his cross-examination, the witness for the Party No. 1 has stated that the employees engaged as per Ext. W-6 were not intimated individually regarding their engagement and there was no practice of intimating individually. This witness has admitted the suggestion that the workman filed applications before the Railway authorities raising dispute regarding his engagement in the year 1988 itself.

6. At the time of argument, it was submitted by the learned advocate for the workman that by order dated 12.05.1988, Ext. W-6. the Divisional Personnel Officer, S.E. Railway, Nagpur passed order for engagement of Hot Weather Waterman and in the said order, the name of the workman was at serial number 15 and the said order was not communicated to the workman in any manner and as such, he could not able to join his duties as per the order Ext. W-6 and subsequent to the year 1988 also, the workman was not provided with any work and the workman coming to know about the order, Ext. W-6 from his colleagues, made several representation to the different authorities of Party No. 1 as per Ext. W-7 to W-22 and also sent a pleader's notice, still then, so action was taken by the Party No. 1 in the matter of giving employment to the workman. It was further submitted by the learned advocate for the workman that as per the claim of Party No. 1, the workman failed to produce any document regarding his engagement in 1986 and 1987 and working for 150 days, his claim cannot be entertained, but the Party No. 1 was in possession of all the documents and Party No. 1 did not provide the workman any document, such as the service card and Party No. 1 did not produce the documents in respect of the workman with a plea of destruction of the documents and when it is admitted by the witness for Party No. 1 that the workman raised protest about his non-engagement in the year 1988 itself, the Party No. 1 should not have destroyed the documents and otherwise also, as there was and is prohibition of engagement of fresh faces as casual labour, without the personal authorization of the General Manager, as per rules and the name of the workman appeared at serial no. 15 of the order of engagement of Hot Weather Waterman in 1988 as per Ext. W-6, it can be held that the workman was engaged by Party No. 1 from 16.04.1986 to 15.07.1986 and 03.05.1987 to 30.06.1987. It was also submitted by the learned advocate for the workman that as the workman had completed 120 days of continuous employment, he was eligible for temporary status and so also for permanent recruitment and the workman is entitled for appointment to the deserving suitable post and cadre with continuity from the date of his initial engagement and all consequential benefits.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the order dated 12.05.1988 regarding engagement of Hot Weather Waterman as per Ext. W-6 was pasted in the notice board as per rules and there was no provision to communicate such order personally to the persons concenred and the workman did not come forward to join duty and as the workman has failed to produce any document in support of his working for the periods from 16.04.1986 to 15.07.1986 and 03.05.1987 to 30.06.1987 i.e. for a total period 150 days, his claim cannot be enterained and the documents regarding engagement of casual labourers in 1986 and 1987 were destroyed as per rules and there was no need to keep them alive, as no case was filed or no dispute was raised before the Competent Authority within the time limit of three years, which was the time limit for destruction of records regarding engagement of casual labourers and the workman is not enitled to any relief?

8. First of all, I think it necessary to mentioned about the schedule of reference in this case. The schedule of reference is, "Whether the action of the Management of Divisional Railway Manager, South Eastern Railway, Kingsway, Nagpur in terminating from job as Hot Weather Waterman to Sunil Kumar Laxman w.e.f. 1988 onwards alongwith others enlisted employee in their circular dated

12.05.1988, is justified? If not, what relief the said workman is entitled & From what date?

However, on perusal of the order dated 12.05.1988 as referred in the schedule of reference, which has been marked as Ext. W-6, it is found that the same is not an order of termination of the job. Rather, the same is an order regarding the engagement of the workman as Hot Weather Waterman for 1988. Hence, the scheduled of reference appears to be patently wrong.

9. So far the non-production of documents by Party No. 1 is concerned, it is to be mentioned that the Party No. 1 has taken the plea that the documents relating to engagement of casual labourers were destroyed as per rules and for that the said documents were not produced. It is found from record that the workman started making representation in writing on 06.01.1990. However, the dispute was raised by the workman before the ALC, Chhindwara in 1999 and before the ALC, Nagpur in 2001. Though it is settled by the Hon'ble Apex Court that there is no limitation for raising an Indsutrial Dispute, it is also settled by the Hon'ble Apex Court that the delay should not be unreasonable and the fact that the workman was making repeated representations is not sufficient explanation for the unreasonable delay. In this case, there is at least delay of 11 years in raising the dispute before the ALC by the workman. As there was no case pending in relation to the engagement of casual labourers by Party No. 1 for the years 1986, 1987 and 1988, the destruction of the documents relating to the some after the period of limitation, i.e. three years as per rules of retention of records by Party No. 1 cannot be said to be illegal. In this case, the delay in raising the dispute is culpable to the workman.

10. The next contention of the workman is that the order dated 12.05.1988 was not communicated to him through any of the approved mode of service, as a result of which, he could not able to join duty in the year 1988. The claim of the Party No. 1 is that as per the Rules, the order dated 12.05.1988 was pasted on the notice board and the workman himself did not come forward to join duty.

According to the statement of claim and evidence of the workman, he came to know about the order dated 12.05.1988 from his colleagues. However, nothing has been mentioned by the workman as to when i.e. the date of his knowledge of the said order either in the statement of claim or in his evidence. According to the workman, in 1988 itself, he had met the concerned authority in person regarding his engagement. The said fact indicates that the workman know about the order in 1988 itself. In his first representation dated 06.01.1990, Ext. W-7, the workman did not mention about his coming to know about the order dated 12.05.1988, Ext. W-6 from his colleagues, the date of his such knowledge and so also, his approaching the concerned authority in person in 1988 or 1989. Moreover, in the statement of claim, it is mentioned by the workman that for working at the station in 1986 and 1987, the orders were given to him through Sectional Commercial Inspector, Headquarters at Chhindwara. If actually orders for working in 1986 and 1987 were given to the workman, then the workman should have filed the same to prove that actually orders for working as Hot Weather Waterman were being given to the persons concerned enlisted for the same and order dated 12.05.1988 was not given to him. It is found that the the Rules of Party No. 1 provide for pasting of such order on the notice board. Hence, it cannot be said that any illegality was committed by Party No. 1 by displaying the order on the notice board and not sending the order to the workman in person.

11. According to the workman, as he had already worked for more than 120 days, he had acquired temporary status and even though, no document has been filed in support of his claim for working more than 120 days in 1986 and 1987, the same can be presumed to be true, as because, as per Rules, no fresh faces can be engaged by Party No. 1 as casual labourers and his name was in the order dated 12.05.1988. However, from the order, Ext. W-6, at best, it can be presumed that the workman was not a fresh face, but from the same, it cannot be presumed that he had completed 120 days of work and had acquired temporary status. The workman has failed to prove that he had worked for more than 120 days in total, in the years, 1986 and 1987 and thus had acquired the temporary status. Admittedly, the workman did not join duty in 1988. So, there was no question of assigning the job of Hot Weather Waterman to the workman in the subsequent years by Party No. 1.

In view of the materials on record and the discussions made above, it is found that the workman is not entiled to any relief. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट संदर्भ संख्या 09/2002 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 प्राप्त हुआ था।

[सं॰ एल-41012/72/2001-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 354.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central

Government hereby publishes the Award (Ref. No. 09/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shows in the Annexure, in the indusutrial dispute between the management of South Eastern Railway and their workmen, received by the Central Government on 13/01/2014.

[No. L-41012/72/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case N\o. CGIT/NGP/09/2002 Date: 13.12.2013

Party No. 1 : The Divisional Railway Manager,
South Eastern Railway,
Kingsway, Nagpur-440001
Maharashtra

Versus

Party No.2 : Shri Sunil Kumar Laxman,
S/o Laxman Singh Thakur,
C/o Chandrapal Singh Rathod,
Near Hanuman Mandir,
Shastri Nagar, Nagpur (Maharashtra)

AWARD

(Dated: 13th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Divisional Railway Manager, South Eastern Railway, Kingsway, Nagpur and their workman. Shri Sunil Kumar Laxman, for adjudication, as per letter No. L-41012/72/2001-IR (B-I) dated 17.01.2002, with the following schedule:—

> "Whether the action of the management of the Divisional Railway Manager, South Eastern Railway, Kingsway, Nagpur in terminating from the job as Hot Weather Waterman to Shri Sunil Kumar Laxman w.e.f. 1988, onwards alongwith others enlisted employee in their circular dated 12.05.1988, is justified? If not, to what relief the said workman in entitled?

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil Kumar Laxman, ('the workman" in short), filed the statement of claim and the management of South Eastern Railway, Nagpur ("Party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he had worked as a Hot Weather Waterman in Nagpur Division in S.E. Railway from 01.05.1986 to 30.06.1986 and 01.05.1987 to 30.06.1987 for a total period of 122 days at Gangiwara Railway Station and for working at the said station, orders were being given to him through the Commercial Inspector, Headquarters by way of provisional orders and the said orders were being taken by the respective Stations Masters, for records and authority to draw salary and for working as such, no working certificate was given to him by the authority and at that time, there was a convention that only those casual labours/candidates, whose names were being listed in the live register maintained in the office of D.P.O S.E. Railway, Nagpur were to be engaged again and no fresh faces were being enlisted for appointment/engagement and in the year 1988, he was not given any order for work and he came to know from his colleagues that his name was enlisted at serial No. 14 in the office order no. DPO/NGP/CON/EMP/Astt./88/HW dated 12.05.1988 issued by the DPO, SE Railway, Nagpur and he was ordered to work as Hit Weather Workman at Kamptee Railway Station under the S.S., Kamptee, but the said order was not communicated to him in any of the approved modes of communication, as a result of which, he could not able to join his duty under the Station Superintendent, Kamptee and he was also not given opportunity of service in the future year, as per procedure and Rules and due to deprivation of such job opportunity, he met the DPO, Nagpur in 1989, 1991 and 1993 in person, besides submitting written representations dated 06.01.1990, 10.12.1994, 07.04.1995, 20.03.1996, 26.02.1997, 21.08.1998 and 28.12.1998 to the different authorities of Party No. 1 and lastly, he also sent pleader's notice, for his engagement in the job, but the Party No. 1 remained deaf and dumb and the appearance of his name in the order dated 12.05.1988 itself shows that he had worked previously, or otherwise, his name should not have been mentioned in the list.

Prayer has been made by the workman for his appointment in suitable post and cadre and all other consequential benefits.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that as the workman has not submitted any document in support of his claim that he worked at Gangiwara Station from 01.05.1986 to 30.06.1986 and 01.05.1987 to 30.06.1987 as Hot Weather Waterman, such claim cannot be entertained and new faces were not engaged as casual labourer, without the prior approval of the General Manager and the order dated 12.05.1988 was properly displayed in the notice board in the place of posting i.e. at Kamptee, but the workman failed to report for work and as per extent rules, there was no provision of sending or serving the order in the home address of the candidate and the order dated 12.05.1988 was not an offer of appointment against open market recruitment, but was an order for engagement of Hot Weather Staff and as per its records, the notice dated 31.05.1999 from advocate Shri Rajesh Tripathi was received on 07.06.1999 and as there was no

records in the office regarding the engagement of the workman and the workman failed to produce any evidence of his working as Hot Weather Waterman at Gangiwara Station during 1986-87, the conciliation proceedings failed and the workman is not entitled to any relief.

4. The workman has examined himself as a witness in support of his claim, besides placing reliance on documents. In this examination in chief, which is no affidavit, the workman has reiterated the facts mentioned in the statement of claim. The workman has also proved the copies of representations and the advocate's notice as Exts. W-III to XII respectively.

In the cross-examination, the workman has admitted that he has not filed any document to show that he had worked as a Hot Weather Waterman from 01.05.1986 to 30.06.1986 and 01.05.1987 to 30.06.1987.

5. One Shri Prashant Tulsiram Naik has been examined as a witness on behalf of the Party No. 1. The evidence on affidavit of this witness is also in the line of the stands taken by Party No. 1 in the written statement.

In the cross-examination, the witness for the Party No.1 has stated that the employees engaged as per Ext. W-II were not intimated individually. regarding their engagement and there who no practice of intimating individually. This witness has admitted the suggestion that the workman filed applications before the Railway authorities raising the dispute regarding his engagement in the year 1988 itself.

6. At the time of argument, it was submitted by the learned advocate for the workman that by order dated 12.05.1988, Ext. W-II, the Divisional Personnel Officer, S.E. Railway, Nagpur passed order for engagement of Hot Weather Waterman and in the said order, the name of the workman was at serial number 14 and the said order was not communicated to the workman in any manner and as such, he could not able to join his duties as per the order Ext. W-II and subsequent to the year 1988 also, the workman was not provided with any work and the workman coming to know about the order, Ext. W-II from his colleagues, made several representation to the different authorities of Party No. 1 as per Ext. W-III to W-XI and also sent a pleader's notice as per W-XII, still then, no action was taken by the Party No. 1 in the matter of giving employment to the workman. It was further submitted by the learned advocate for the workman that as per the claim of Party No. 1, the workman failed to produce any document regarding his engagement in 1986 and 1987 and working for 122 days, his claim cannot be entertained, but the Party No. 1 was in possession of all the documents and Party No. 1 did not provide the workman any document, such as the service card and Party No. 1 did not produce the documents in respect of the workman, with the plea of destruction of the documents and when it is admitted by the witness for Party No. 1 that the workman raised protest about his non-engagement in the year 1988 itself, the Party No. 1 should not have destroyed the documents and otherwise also, as there was and is prohibition for engagement of fresh faces, as causal labour, without the personal authorization of the General Manager, as per rules and the name of the workman appeared at serial no. 14 of the order of engagement of Hot Weather Waterman in 1988 as per Ext. W-II, it can be held that the workman was engaged by Party No. 1 from 01.05.1986 to 30.06.1986 and 01.05.1987 to 30.06.1987. It was also submitted by the learned advocate for the workman that as the workman had completed 120 days of continuous employment, he was eligible for temporary status and so also for permanent recruitment and the workman is entitled for appointment to the deserving suitable post and cadre with continuity from the date of his initial engagement and all consequential benefits.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the order dated 12.05.1988 regarding engagement of Hot Weather Waterman as per Ext. W-II was pasted in the notice board, as per rules and there was no provision to communicate such order personally to the persons concerned and the workman did not come forward to join duty and as the workman has failed to produce any document in support of his working for the periods from 01.05.1986 to 30.06.1986 and 01.05.1987 to 30.06.1987 i.e. for a total period 122 days, his claim cannot be entertained and the documents regarding engagement of casual labourers in 1986 and 1987 were destroyed as per rules and there was not need to keep them alive, as no case was filed or no dispute was raised before the Competent Authority within the time limit of three years, so, destruction of records regarding engagement of casual labourers was done and the workman is not entitled to any relief.

8. First of all, I think it necessary to mention about the schedule of reference in this case. The schedule of referece is, "Whether the action of the Management of Divisional Railway Manager, South Eastern Railway, Kingsway, Nagpur in terminating from job as Hot Weather Waterman to Sunil Kumar Laxman w.e.f. 1988 onwards alongwith others enlisted employee in their circular dated 12.05.1988, is justified? If not, what relief the said workman is entitled & from what date?

However, on perusal of the order dated 12.05.1988, as referred in the schedule of reference, which has been marked as Ext. W-II, it is found that the same is not an order of termination of the job. Rather, the same is an order regarding the engagement of the workman as Hot Weather Waterman for 1988. Hence, the schedule of reference appears to be patently wrong.

9. So far the non-production of documents by Party No. 1 is concerned, it is to be mentioned that the Party No. 1 has taken the plea that the documents relating engagement of casual labourers were destroyed as per rules and for

that the said documents were not produced. It is found from record that the workman started making representation in writing w.e.f. 06.01.1990. However, the dispute was raised by the workman before the ALC, Chindwara in 1999 and before the ALC, Nagpur in 2001. Though it is settled by the Hon'ble Apex Court that there is no limitation for raising an Industrial Dispute, it is also settled by the Hon'ble Apex Court that the delay should not be unreasonable and the fact that the workman was making repeated representations is not sufficient explanation for the unreasonable delay. In this case, there is delay of at least 11 years in raising the dispute before the ALC, by the workman. As there was no case pending in relation to the engagement of casual labourers by Party No 1 in the year 1986, 1987 and 1988, the destruction of the documents relating to the same, after the period of limitation, i.e. three years, as per rules of retention of records by Party No 1 cannot be said to be illegal or unjustified. In this case, the delay in raising the dispute is culpable to the workman.

10. The next contention of the workman is that the order dated 12.05.1988 was not communicated to him through any of the approved modes of service, as a result of which, he could not able to join duty in the year 1988. The claim of the Party No. 1 is that as per the Rules, the order dated 12.05.1988 ws pasted on the notice board and the workman himself did not come forward to join duty.

According to the statement of claim and evidence of the workman, he came to know about the order dated 12.05.1988 from his colleagues. However, nothing has been mentioned by the workman as to when i.e. the date of his knowledage of the said order, either in the statement of claim or in his evidence. According to the workman, in 1988 itself, he had met the concerned authority in person regarding his engagement and the said fact indicates that the workman knew about the order in 1988 itself. In his first representation dated 06.01.1990, Ext. W-III, the workman did not mention about his coming to know about the order dated 12.05.1988 Ext. W-II from his colleagues, the date of his such knowledge and so also, his approaching the concerned authority in person in 1988 or 1989. Moreover, in the statement of claim, it is mentioned by the workman that for working at the station in 1986 and 1987, orders were given to him through Sectional Commercial Inspector, Headquaters at Chhindwara. If actually orders for working in 1986 and 1987 were given to the workman, then the workman should have filed the same to prove that actually orders for working as Hot Weather Waterman were being given to the persons concerned enlisted for the same, but order dated 12.05.1988 was not given to him. It is found that the Rules of Party No. 1 provide for pasting of such order on the notice board. Hence, it cannot be said that any illegality was committed by Party No. 1 by displaying the order on the notice board and not sending the order to the workman in person.

11. According to the workman, as he had already worked for more than 120 days, he had acquired temporary status and even though no document has been filed in support of his claim for working more than 120 days in 1986 and 1987, the same can be presumed to be true, as because, as per Rules, no fresh faces can be engaged by Party No. 1 as casual labourers and his name was in the order dated 12.05.1988. However, from the order, Ext. W-II, at best it can be presumed that the workman was not a fresh face, but as because, his name was in Ext. W-II, it cannot be presumed that he had completed 120 days of work and had acquired temporary status. The workman has failed to prove that he had worked for 120 days in total in the year 1986 and 1987 and thus had acquired the temporary status. Admittedly, the workman did not join duty in 1988. So, there was no question of assigning the job of Hot Weather Waterman to the workman in the subsequent years by Party No. 1.

In view of the materials on record and the discussions made above, it is found that the workman is not entitled to any relief. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट संदर्भ संख्या 38/08 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 प्राप्त हुआ था।

[एल-12012/111/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 38/08 of the Kanpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Regional Office, State Bank of India, Kahoo Kothi Branch, State Bank of India, Local Head Office, and their workmen, received by the Central Government on 13/01/2014.

[No. L-12012/111/2005-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR.

I.D. Nos. 38/08

Pramod Kumar Dubey,
So Late Sri Ram Gopal Dubey,
C/o Sri Ganesh Shanker Tripathi, UTUC,
128/102, Yashodanagar, Kanpur.

And

Regional Manager,
State Bank of India,
Regional Office,
Civil Lines,
Kanpur.

AWARD

1. Central Govt. Mol, New Delhi *vide* notification no. L-12012/111/2005-IR B.I. dated 02.06.08 has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the mamagement of State Bank of India, Kanpur, in terminating the services of Sri Pramod Kumar Dubey (Guard) with effect from 12.06.04 is just fair and legal. To what relief is the workman concerned is entitled?

Brief facts are—

1. It has been alleged by the claimant that he was engaged as guard w.e.f. 16.09.03 at Branch Office Kahoo Kothi Kanpur in State Bank of India and worked there till 11.06.04 with honestly. His attendance was marked at Guard Register. He was being paid his wages every month after obtaining his signature on the attendance sheet.

2. All of a sudden he was removed by an oral order dated 12.06.04, without informaing any reason. He has completed 270 days and at the time of retrenchment compensation.

3. Accordingly it has been prayed that the workman be reinstated in service with full back wages and all consequential benefits.

4. Opposite party has filed written statement refuting the entire claim of the workman on the ground that there never existed any relationship of master and servant between the contesting parties, although the claimant was engaged by the opposite party to perform casual work but he never completed more than 240 days of continuous service, the branch manager was not having any authority or power to engage such persons like the workman, therefore, there was no cause of action for the workman to raise the present dispute, therefore, the workman is not entitled for any relief as claimed by him. Claim of the workman is liable to be rejected and should be rejected.

5. Both the parties have adduced oral as well as documentary evidence. Claimant has adduced himself as W.W.1. Opposite party has adduced M.W.1 Sri Shyam Dhar Dubey who is the branch manager of the bank.

6. Heard and perused the whole evidence.

7. Opposite party has specifically admitted the engagement of the workman Sri Pramod Kumar Dubey in the written statement as well as in his oral evidence.

8. Only denial is that the W.W.1 has not completed 240 days. Whereas W.W.1 has specifically stated on oath that he had worked with the opposite party branch with effect from 16.09.03 till 11.06.04 He has been thoroughly cross-examined on this point. Nothing has come out in his statement which may disbelieve has statement. He also stated that during duty hours his attendance was marked properly. He has filed the photocopies of attendance register which are paper no. 9/5-14. I have examined these documents. The name of the workman is written over there and the last date has been shown as 07.06.04. Moreover, it has been contended by the claimant that the original of these document is in the custody of the opposite party, who has failed to file these documents.

9. M.W.1 has also been cross examined on this point. He stated that on these documents there are some initials of some officers of the branch but he is not in position to explain the same.

10. Claimant did his best to summon the documents from the opposite party. Initially the opposite party did not file the documents and filed an affidavit saying that the documents are not traceable, but later on filed bankers cheque in original which relate to the workman right from 03.10.03 till 12.06.04, which are paper no. 19/3-10.

11. It has been contended by the workman that they have filed paper no. 17/7 which is a statement of salary and allowances paid to Sri Peramod Kumar Dubey, though the veracity of this document has been made doubtful by the opposite party, but I do not find any reason to disbelieve this document because the original of this document is in the custody of opposite party, it bear some stamp of the bank. The dates which are mentioned in this document also correspondingly relates to the bankers cheques which have been filed by the opposite party. It appears one or two original cheques have not been

filed by the opposite party like 01.01.04 for the reason best known to the opposite party. When M.W.1 was cross examined on several points, he simply stated that he had never been posted in the branch at Kahookothi, therefore, he does not have any record showing how many days the workman has worked in the branch.

12. When a specific question was put that the workman has worked in the branch right from 16.09.03 to 11.06.04, he did not deny this suggestion, but showed his ignorance.

13. It is also stated by M.W.1 that no compensation or notice was given to him as per the record. He also stated that there is no other record of the branch Kohookothi.

14. Therefore, considering all the facts and documentary evidence filed by both the parties the statement of the workman coupled with the documentary evidence appears to be believable. There is no reason to discard his statement. The statement of M.W.1 does not inspire confidence, firstly he was never posted at branch office Kahookothi, he does not having any personal knowledge of the case.

15. Therefore, the workman has been able to prove his case that he was engaged as guard at Kahookothi branch and worked there since 16.09.2003 till 11.06.04. Admittedly he was not offered any notice, notice pay or retrenchment compensation at the time of termination of his services by the bank.

16. It is contended by the AR of the opposite party that the Kahookothi branch has not been in existence now. If at all it is found that the workman had worked for more than 240 days, the claimant may be given some compensation for that. He has placed his reliance on the following decisions—

1. 2012 Lab IC 231 Alld. High Court, Zila Panchayat Mathura and another versus Dy. Labor Commissioner Agra Region and another. It has been held by the Hon'ble Court, that relief for lump sum amount towards back wages and compensation could be awarded and reinstatement in given circumstances must be declined.

2. 2012 Lab IC 255 Alld. High Court, Ram Ji Pandey and others versus PO Labor Court U.P. Gorakhpur and others. In this case also the Hon'ble High Court found that the workman has completed 240 days in a calendar year, as such he would be entitled to lump sum compensation.

17. Considering the facts and over all aspect of the present case that the Kahookothi branch is not in existence at this time. Moreover this branch was also non chest branch where normally security guards are not employed.

18. Therefore, considering all these aspects and the decision laid down by the Hon'ble High Court that a reasonable compensation of Rs. 40000/- will be sufficient instead of directing reinstatement of the workman to meet the ends of justice.

19. Hence reference is decided accordingly in favour of the workman and against the opposite party.

Dt. 30-7-2013 RAM PRAKASH, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम एस दिल्ली नगरी सहकारी बैंक के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट संदर्भ संख्या 91/2013 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 प्राप्त हुआ था।

[सं॰ एल-12025/01/2014-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 91/2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Delhi Nagri Sehkari Bank and their workmen, received by the Central Government on 13.01.2014.

[No. L-12025/01/2014-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 91/2013

Shri Naresh Kumar Tyagi
185/15-A Moujpur
Delhi-110053. .....Workman

Versus

M/s Delhi Nagri Sehkari Bank,
720, Near Ghanta Ghar,
Subzi Mandi, Delhi-07. .....Management

AWARD

A Branch Manager, working in Delhi Nagri Sehkari Bank (in short the bank) allegedly committed gross

misconduct. He was suspended. Charge sheet was served upon him. His reply to the charge sheet was found not to be satisfactory. A domestic enquiry was constituted against him. He participated in the domestic enquiry. Enquiry Officer returned the findings against the Branch Manager. This Disciplinary Authority concurred with the findings of the Enquiry Officer and served notice of show cause calling upon the Branch Manager to explain as to why punishment of 'removal from service' should not be awarded to him. On consideration of record of Enquiry Officer and facts presented by the Branch Manager, the Disciplinary Authority removed the latter from service of the bank, *vide* order dated 26.04.2012.

2. The Branch Manager, namely, Shri Naresh Kumar Tyagi approached the Conciliation Officer seeking redressal of his grievance. The Conciliation Officer called upon the bank to participate in the conciliation proceedings. Since the bank opted not to participate in the conciliation proceedings, proceedings before the Conciliation Officer ended into a failure. The Branch Manager projects that a period of 45 days, from the date of moving an application before the Conciliation Officer, stood expired. He raises the dispute under sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act) for adjudication, without being referred for adjudication by the appropriate Government.

3. Documents viz., notice dated 26.11.2011, reply to the said notice by the claimant, memo dated 12.12.2012, charge sheet dated 23.12.2011, reply dated 29.12.2011, order dated 04.01.2012 appointing the Enquiry Officer, written submissions filed before the Enquiry Officer, enquiry proceedings dated 19.01.2012, 25.01.2012, 30.01.2012, 01.02.2012, report of the Enquiry Officer, representation dated 06.04.2012 submitted by Shri Tyagi, and order dated 26.04.2012, are filed alongwith the claim statement. These documents project that Shri Naresh Kumar Tyagi was working as Branch Manager with the bank. Contra to it, certificate issued by the Conciliation Officer (Central) on 07.05.2013 highlight that Shri Naresh Kumar Tyagi was working as clerk cum Cashier.

4. When Shri Naresh Kumar Tyagi was heard over the matter, he projects that he was working as a Branch Manager with the bank. He explains that there were 22-23 employees, who were working under his supervision and control. Therefore, question for consideration would be as to whether Shri Tyagi enjoys status of workman, as defined under section 2(s) of the Act. For an answer, definition of the term 'workman' is to be construed, which definition is reproduced thus:

> "(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 or 1950) or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is, employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

5. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a persons falls within the definition of workman on that day, the Tribunal would be

vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

6. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by any one of the exceptions.

7. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or tehnical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employees is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main he is required to do even though he may incidentlly doing other type of work.

The words 'managerial or administrative capacity' have not been defined in the Act, therefore have to be interpreted in their ordinary sense. In an establishment,a person may be in a managerial capacity or administrative, if the work assigned to him require a degree of initiative command and control which are usually associated with the position of managerial or administrative capacity. In deciding such a question, one has to consider the functions and duties assigned to the person. Several tests, laid down by the Apex Court in Prem Sagar [1964)(1) LLJ 47] for deciding the question as to whether a person is employed in managerial capacity, are as follows:

> "It is difficult to lay down exhaustively all the tests which can be reasonably applied in deciding this question as several considerations would naturally be relavant in dealing with this problem. It may be inquired whether the person had a power to operate on the bank account or could he make payments to third parties and enter into agreements with them on behalf of the employees, was he entitled to represent the employer to the worlds at large in regard to the dealings of the employer with strangers, did he have authority to supervise the work of the clerks employed in the establishment, did he have control and charge of the correspondence, could he make commitments on behalf of the employer, could he grant leave to the members of the staff and hold disciplinary proceedings against them, has he power to appoint members of the staff or punish them: these and similar other tests may be usefully applied in determining the question about the status of an employee..."

8. Operation of bank account, controlling of staff,carrying on correspondence, disbursing salary and convening meetings, were held to be managerial jobs in Sunil Kumar Ghosh [1978 (37) FLR 247]. The mere fact that the employee was designated as a manager or that he represented the management in prior adjudication proceedings cannot by itself prove that he was performing 'managerial duties' within the meaning of section 2(s)(ii) or 2(s)(iii) of the Act. Reliance can be placed on precedent P.A.S. Press [1960 (1) LLJ 792]. For determination of such a question, no abstract or rigid formula can be employed. His main and substantial work is to be looked into. Reference can be made to precedent in the management of Scindia Potteries [1974(29) FLR 325]. In order to take an employee out of definition of 'workman', it is necessary to show that he is employed, in fact and in substance, mainly in a managerial or administrative capacity. See Syndicate Bank Ltd. [1966 (11) LLJ 194] and Ved Prakash Gupta (1984 Lab. I.C. 658).

9. Merely performing some supervisory duties will not take out an employee out of the ambit of definition of workman. The work 'supervision' means to oversee or to look after. Supervision which is relevant in this connection is the supervision done by an employee in a higher position over the employees in the lower position. Supervision may be in relation to the work or in relation to the person. The word 'supervisory' as used in section 2(s) of the Act does not relate to supervision of an automatic plant. Many machines run automatically on power. they do not have to be run by human energy. There running and functioning has to be watched and repaired if anything goes wrong. A person who attends to such machines may either do technical or manual work within the meaning of section 2(s) of the Act. But he does not do supervisory work merely because he looks after the machine. The essence of supervisory nature of work under sections 2(s) of the Act is the supervision by one person over the work of another. See Blue Star Ltd. (1975 (31) FLR 102).

10. A person can be said to be a supervision if there are persons working under him. over whose workhe has to keep a watch. In other words, he is that person who

examines and keeps a watch over the work of his subordinates and if they err in any way, corrects them. It is his duly to see that the work in any industrial unit is done in accordance with the manual, if there is one, or in accordance with the usual procedure. It is not his function to bring about any innovation. It is not his function to take any managerial decision but it is his duly to see that the persons over whom he is supposed to supervise the work assigned to them, they work according to rules and regulations. The central concept of supervision is the fact that there are certain persons working under him. The essence of supervisory work is the supervision by one person over the work of others. For exercising supervisory powers, it may often be necessary that the supervisor himself must have technical expertise, otherwise he may not be in a position to exercise proper supervision of the workmen handling sophisticated plants and machines. A supervisor need not be a manager or an administrator. He can be a workman so long as he does not exceed the wage limit of Rs. 1600.00 per month and irrespective of his salary, is not a workman who is to discharge functions mainly of managerial nature by reason of the duties attached to his office or power vested in him.

11. A person cannot be said to be working in a supervisory capacity merely because he used to supervise a person who helpd him in doing the work, which he himself is to perform. Fro instance, a clerk who has been given the assistance of the peon cannot be said to be working in a supervisory capacity. When one talks of a person working as supervisor, one understands it to mean a person who is watching the work being done by others to see that it is being done properly. See Mathur Aviation [1977 (II) LLJ 225]. thus in determining the status of an employee, his designation is not decisive. What determines the status is the consideration of the nature of his duties and functions assigned to him. A supervisor should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority without the sanction of the manager or other supervisors. In the absence of precise and positive evidence to prove the exact nature of work which the employee was performing, it cannot be helf that he was doing adminstrative or supervisory work.

12. As projected by documents referred above, Shri Naresh Kumar Tyagi was working as Branch Manager with the bank. It is not his case that this designation was merely decorative. He concedes that he used to perform all functions of the Branch Manager. To carry out his duties, there were 22-23 employees to assist him. He presents that he used to supervise the work and conduct of 22-23 employees working under his control and supervision. He nowhere disputes that managerial and administrative functions were being performed, besides supervisory duties, while working as Branch Manager. Therefore,it is apparent that the claimant was employed mainly in managerial or administrative capacity. Besides, working in that capacity, he used to exercise supervision on the employees working under his command and control. Consequently, it is crystal clear that Shri Naresh Kumar Tyagi does not adorn status of a workman, as defined under section 2(s) of the Act.

13. The Conciliation Officer wrongly describes designation of the claimant as Clerk cum Cashier. It emerges that the failed to apply his mind to the facts, presented before him. He recorded wrong designation of the claimant in his certificate dated 07.05.2013. This wrong designation is contrary to the stand of the claimant, as to his status in the bank. Consequently, it is crystal clear that certificate issued by the Conciliation Officer nowhere espouse cause of the claimant. This certificate is brushed aside.

14. In view of the reasons detailed above, it is apparent that Shri Naresh Kumar tyagi is not a workman within the meaning of section 2(s) of the Act. When Shri Tyagi is not a workman, dispute which he wants to raise cannot answer the ingredients of an industrial dispute, defined under section 2(k) of the Act. For the sake of convenience, definition of industrial dispute is extracted thus:

> "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen,which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen,or (c) workmen and workmen, (3) subject matter of the dispute,which should be connected with—(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. Since the claimant is not a workman, dispute which he wants to raise before this Tribunal does not answer the definition of "industrial dispute". This Tribunal cannot invoke its jurisdiction to enter into adjudication of the dispute. The dispute raised by the claimant is, accordingly, discarded. An award is passed against the claimant and in favour of the bank. It be sent to the appropriate Government for publication.

Dated: 10.06.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

धनबाद के पंचाट संदर्भ संख्या 265/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/1/2014 को प्राप्त हुआ था।

[सं॰ एल-12012/22/2001-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 265 of 2001 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Zonal Office, Renigunta Road and their workmen, received by the Central Government on 13/1/2014.

[No. L-12012/22/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of I.D. Act.

Reference No. 265 of 2001.

Parties : Employers in relation to the management of State Bank of India, Patna.

AND

Their Workmen

Present : Shri H.M. Singh,
Presiding Officer.

Appearances:

For the Employers : Shri R.N. Chatterjee, Advocate.
For the Workman : Shri P.R. Rakhit, Advocate.
State: Bihar Industry: Bank.

Dated, the 9th Jan., 2010.

AWARD

By Order No. L-12012/22/2001-IR (B-I) dated 26.11.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

> "Whether Sri Lalan Kumar Jha, workman had been appointed by the Branch Manager, State Bank of India, Morsanda Branch, Katihar vide letter date 4-10-86 & worked upto 21.9.1997 on various capacity including canteen boy, if so, whether the action of the management in terminating the services of workman on 22.9.1997 without regularising him is justified? If not, what relief the workman is entitled?"

2. The case of the concerned workman, in brief, is that he was engaged by the management as canteen boy in Morsanda Branch of State Bank of India in the year 1985-86 issued by Branch Manager. He joined the duty as canteen boy on the said date. The work of the concerned workman was assigned to look after the office canteen room carefully and serve the officials of the Branch Office in usual manner. The duty hours of the concerned workman was fixed by the Bank from 10.00 AM to 5 PM and the concerned workman was following the instruction and guidelines of the management very honestly and dedicatedly. The wages/remuneration of the concerned workman was fixed by the Bank at Rs. 500/- per month. The concerned workman has also served with the management as Messenger Boy for total period of 95 days and the Bank used to pay the wages for the job of Messenger boy at the rate of Rs. 5/- initially and later on at the rate of Rs. 8.50 and Rs. 10/- daily basis. He completed all formalities for his regularisation and submitted the required application to the management. The management considering the application of the workman called him for interview on 13.2.97 at 11.00 AM. After the interview of the daily wagers, the management prepared lists of 234 daily wagers for their regularisation. The concerned workman's position was at sl. No. 234. Bank regularised the service of 233 daily wagers and left the concerned workman without assigning any reason. Ultimately, canciliation proceeding was held but without any effect. It has been submitted that the concerned workman is deprived of the legitimate claim being weaker section of the Society and the Bank is bound to regularised his service in the regular Bank service from the date of interview i.e. w.e.f. 13.2.1997.

It has been prayed before this Tribunal to pass an award in favour of the concerned workman directing the management to regularise the service of the concerned workman as regular employee of the Bank w.e.f. 13.2.97 with full back wages.

3. Written statement has been filed by the management stating that Sri Lalan Kumar Jha was engaged by the local Implementation Committee, which runs and manages such canteens, an independent and separate entity for the staff welfare. The Committee engaged the canteen boy as required by them on their own behalf and not on behalf of the Bank. The concerned workman filed a writ petition (CWJC No. 78/98) before the Ho'n'ble High Court, Patna. The Bank filed its counter-affidavit seeking negating the writ petition. The Hon'ble High Court vide its Order dated 8.12.98 on being the prayer of learned counsel for the concerned workman, permitted to withdraw writ petition with liberty to raise an industrial dispute. The grievance of the concerned workman in the said writ petition was non-regularisation of his service by the Bank, which should have been an industrial dispute under the Industrial Disputes Act and for that the espousal by a trade union to which the concerned workman was a member

was necessary. However in the instant case there was no espousal from trade union. There canteens are being run by the LIC to cater to the staff tea snacks etc. and as such it has nothing to do with the Bank's activities and business of the Bank. Thus, the dispute raised by petition does not fall within the ambit of Section 2(k) reads with Section 25 of the Industrial Disputes Act, 1947, so far as the Bank is concerned. The claim of the petitioner is also stale and devoid of any merit.

In rejoinder to the written statement of the concerned workman, it has been stated that the concerned workman was never appointed by the Bank as canteen boy. The concerned workman was called for an interview on13.2.94 to examine the suitability for the absorption in the Bank's service. But the Interview Board found him unsuitable for absorption in the Banks service. On perusal of previous records it had revealed that while working as canteen boy in the Local Implementation Co. Canteen at Morsanda Branch the concerned workman used to accept illegal gratification from the rural borrow of the bank. The borrowers lodged a complaint in writ: with the bank, which reflected doubtful integrity of the petitioner. The allegations that the petitioner was working as a middle man in disbursement of Bank's advances were enquired into by one of the senior office of the Bank and found the same to be true. The Bank also initiated disciplinary proceedings against the then Branch Manager, Morsanda Branch. It has also been state that the Interview Board had found Sri Lalan Kumar Jha and 5 other candidates unsuitable for the Bank's service. So it is false to say that the Bank had regularised all candidates except Lalan Kumar Jha.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the action of the management in terminating the service of workman on 22.9.1997 without regularising him is justified and the concerned workman is not entitled to any relief.

4. The workman has filed rejoinder to the written statement of the management stating almost same facts as have been stated in the written statement.

5. The concerned workman, Lalan Kumar Jha, examined himself as WW-I and he has proved documents Exts. W-1 to W-4.

The management has produced MW-1, S.K. Das, who has proved documents as Exts. M-1 to M-9. The management has also produced MW-2, Arbind Kumar Mishra, who has also proved documents, Exts. M-3, M-5, M-8 and M-9.

6. Main argument argued on behalf of the concerned workman is that he has been called for interview alongwith 234 candidates, but others have been regularised and selected but he was not selected and regularised. In this respect it has been argued that the criminal case which was instituted against the concerned workman had already been ended in acquittal.

The management argued that the concerned workman used to take bribe for grant of loan from the rural borrowers of the Bank with the connivance of the Branch Manager. The Bank initiated disciplinary proceeding against the then Branch Manger and the F.I.R. was lodged against the concerned workman. He was called for interview, but he was not found fit by the Interview Committee for regularisation. In this respect it has been argued that Local Implementation Committee appointed the concerned workman in the Canteen as canteen boy. But the representative of the workman argued that the local Implementation Committee was not appointing authority and he was appointed by the Bank Branch Manager, Morsanda Branch on 4.10.96 as per Ext. W-1 and W-1/2. It has also been argued that the Local Implementation Committee has got no role for running the canteen regarding work performed by the concerned workman. It has also been argued that the Branch Manager recommended for his regularisation, but even then he was not regularised and other persons have been regularlised though letter was issued by the Branch Manager, as per Ext. W-2/4, for his regularisation and good workings.

7. In this respect the management argued that the concerned working with the connivance of the Branch Manager used to accept illegal gratification from the rural borrowers of the Bank. Though the concerned workman was called for interview only on the ground that he had worked for sometime on casual basis, but this cannot be disputed that it is upon the interview Selection Committee to select or not to select a person. A person cannot claim that he should be selected by the Committee though there is vacant post, as per Ext. M-6, of messenger and the Bank has regularised against those posts some persons.

8. From the side of the management the decision of Hon'ble Supreme Court reported in 2001(I) LIJ (SC) 1441 has been referred in which Hon'ble Supreme Court laid down Bipartite Agreement Sastri Award—Handbook—Nieither award nor Hand-book cast on obligation on SBI to run canteens. Union raised industrial dispute that canteen employees be absorbed as Bank employees—Tribunal awarded in favour of employees—Bank filed writ in High Court—During pendency of appeal for settlements were arrived at between union and Bank—Branches where total employees are a minimum of 100 canteen taken over by Bank and employees absorbed after due selection process—Rest of canteens where total employees are less than 100, run by Local Implementation Committee, only facilities provided—Case in High Court settled as per settlement—Left out employees claimed absorption—Tribual rejected appeal—High Court on appeal allowed appeal—Aggrieved Bank filed this appeal—Held no obligation on bank to run canteens.

The management also referred 1999(II) LLJ 59 (Abhimanyu Mandal Vs. State Bank of India) Orissa High Court in which the Hon'ble High Court laid down that Regularisation—In post of Messenger—State Bank of India—Panel of temporary employees and daily wagers and casual labour—Modalities about drawing name from either panel to be decided administratively in consultation with federation's affiliate by Civil Management according to local requirements— pleadings of petitioners that modalities must be followed in future also—panel ceased to be operation with effect from March 31, 1997—question of regularisation does not arise thereafter.

Regarding whether the canteen run by the management it does not matter because on the basis of casual work done by the concerned workmen the management considered him to call for interview alongwith other candidates for appointment. The Interview Committee did not find him fit for appointment or to select him for regularisation. This cannot be challenged in any way by the concerned workman.

9. Ext. W-3 only shows that the concerned workman was acquitted under Sec. 420, 120-B and 384 I.P.C. The criminal case lodged against the concerned workman was regarding his conduct for grant of loan by Morsanda Branch and getting some money from the borrowers in granting loan by the Bank and taking Rs.2000/ shows that his conduct was not very much responsible for not selecting by the Interview Board of the Management. Papers filed by the management as per Ext.M-2 shows that payment is made to Local Implementation Committee, Morsanda Branch Secretary for running of the canteen. It shows only that the Secretary. Staff Welfare Implementation Committee, Morsanda Branch maintained the concerned canteen where the concerned workman was working and the payment is made by the management to the Secretary, Local Implementation Committee. Ext. M-4 shows that the payment is made to the concerned workman as he is working as canteen boy, so he was not the employees of the Bank so that he may be regularised. He is working with the Canteen which is run by the Secretary, Local Implementation Committee for welfare of the employees and as officers and employees of the Bank taking benefit of the canteen and on that basis the concerned workman was given opportunity and called for interview for absorption in the Bank. But he was not found fit for regularisation by the Interview Board.

In view of the above facts and circumstances, I hold that the concerned workman is not entitled to any relief.

10, Accordingly, I render the following award—

The action of the management in terminating the services of the workman, Lalan Kumar Jha, on 22-9-1997 without regularising him is justified and hence the concerned workman is not entitled to any relief.

H.M. SINGH, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 07/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/1/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/336/2000-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.07/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 13/1/2014.

[No. L-22012/336/2000-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. Manju Nigam, Presiding Officer

I.D. No. 07/2004161/2001

Ref. No. L-22012/336/2000-IR(CM-II) dated 23.12.2003

BETWEEN

The State Secretary Bharitya Khadya Nigam Karmchari Sangh
5/6, Habibullah Estate
Lucknow-226001
(Espousing cause of Shri Pratap Singh)

AND

The Sr. Regional Manager
Food Corporation of India
5/6, Habibullah Estate
Lucknow-226001

AWARD

1. By order No. L-40012/87/2001-IR(DU) dated 11.09.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this

industrial dispute between the State Secretary, Bharitya Khadya Nigam Karmchari Sangh, 5/6, Habibullah Estate, Lucknow and the Sr. Regional Manager, Food Corporation of India, 5/6. Habibullah Estate, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the Action of the Management of Food Corporation of India in not granting selection grade from 1992 to Sh. Pratap Singh and imposing penalty vide order dated 7.7.1999 were legal and justified? If not, to what relief the workman is entitled to?"

3. The case of the workman's union, in brief, is that the workman, Pratap Singh was appointed on 03.05.71 as Assistant Grade-III (Depot) and was promoted in April, 1972 as Assistant Grade-II(D) and thereafter further promoted to the post of Assistant Grade-I (D) in December, 1980. It is alleged that the workman was entitled for selection grade after completion of 12 year's service in a grade i.e. after completing 12 years service in Assistant Grade-I (D) in December, 1992; but the management did not grant the same to the workman. Further it is submitted by the workman's union that the workman as issued a charge sheet dated 28.12.98 for alleged shortage/excess of stock in the stacks; and thereafter, was penalized vide impugned order dated 07.7.99 without considering his reply. Accordingly the workman's union has prayed that the management of FCI be directed to grant selection grade to the workman and set aside the impugned order dated 07.07.99.

4. The management of the FCI has disputed the claim of the workman by filling its written statement; wherein it has submitted that the workman was granted selection grade against the panel year 1993; and thereafter, the same was withdrawn due to recasting of seniority of AG I (D) as per court order. It is further submitted that the workman was charge sheeted for his misconduct and after conducting the formal inquiry and considering all the material on record i.e. evidence, inquiry report and reply of the charged official etc. the penalty order dated 07.07.99 was issued. It is submitted by the management that the impugned order dated 07.07.99 is in accordance with the principals of natural justice; and there is nothing illegal in it. Accordingly, the management of the FCI has prayed that the claim of the workman's union be rejected without any relief to the workman concerned.

5. The workman's union has filed its rejoinder, wherein it has not brought any new fact apart from reiterating the averments already made by him in the statement of claim.

6. The workman has held photocopy of certain documents vide list dated 04.02.2005. paper No. C-17 and in rebuttal the management has filed none. The workman's union examined the workman in support of its case on 08.12.2005, but the workman did not turn up for his cross-examination in spite of ample opportunities being given to him and ultimately it was presumed vide order dated 07.05.2007 that the workman does not want to get cross-examined and accordingly. 11.07.2007 was fixed for management's evidence. When the management of FCI did not produce any evidence on serveral dates accordinlgy, it was presumed vide order dated 08.06.2009 that the management does not want to lead any evidence and the case was fixed for arguments on 10.08.2009. The parties filed their respective written arguments in support of their cases; but did not forwarded any oral argument are remaining absent for long time; accordingly, the case was reserved for award, keeping in view the long pendency of the case and reluctance of the parties of contest their case.

7. It was the case of the workman's union that the management of the FCI did not grant the selection grade to the workman after completion of 12 year's service in a grade; and further that it illegally penalized the workman by issuing impugned order dated 07.07.99 without complying with the settled principles of natural justice. The workman has field photocopy of certain documents in support of his case; and has tried to prove them through the evidence of the workman; but since the workman did not turn up for his cross-examination, the evidence forwarded by the workman's union become futile. Thus, the version of the workman's union stands unproved.

8. Per contra, the management of the FCI has disputed the claim of the workman's union with pleading that the thouht the selection was granted to the workman but the same was withdrawn consequent to recasting of seniority of AG-1(D) as per directions of the Court. Further it is also the case of the management that the impunged dated 07.07.99 was issued after due consideration of the reply of the workman and affording him all reasonable opportunity to defend himself, accordingly, there is no infirmity it and the same is liable to be upheld along with the order dated 07.07.99.

9. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the action of the management in granting the selection grade to the workman and that of order dated 07.07.99 of the management, whereby the workman was imposed penalty; and to prove that the action of the management in not granting him selection grade and issuing the impugned order dated 07.07.99 was illegal. It was the case of the workman's union that the workman was not granted selection grade and was penalized by the impugned order dated 07.07.99. This claim has been denied by the management; therefore, it was for the workman's union to lead evidence to show that alleged injustice was done to the workman by the managment.

10. In M/s. Uptron Powertronics Employees' Union. Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries *vs.* Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited *vs*. State of U.P. and others 1984 (49) FLR 38 and (AIId.) Mertiech India Ltd. *vs*. State U.P. and others 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

11. In the present case the workman's union failed to prove its case as the workman did not turn up for his cross-examination; and accordingly his evidence could not taken into account. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman had illegally been denied with the selection grade and the impugned order dated 07.07.99 was issued without observing the due procedures of natural justice but the workman's union failed to forward any evidence in support of its claim, as its witness did not turn up for cross-examination before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of FCI in not granting selection grade from 1992 to the workman and imposing penalty vide order dated 07.07.99 was either illegal or unjustified.

12. Accordingly, the reference under adjudication is adjudicated against the workman's union; and as such. I come to the conclusion that the workman, Pratap Singh is not entitled to any of the relief(s) claimd.

13. Award as above.

Lucknow. Dr. MANJU NIGAM, Presiding Officer
1st October, 2013

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ए एस आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, नई दिल्ली के पंचाट (संदर्भ संख्या 61/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल॰-42012/90/2001-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 61/2001 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 13/01/2014.

[No. L-42012/90/2001-IR(CM-II)
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-II, DELHI

Present:— Shri Harbansh Kumar Saxena

ID No. 61/2001

Smt. Usha Rani

Versus

Archaeological Survey of India N.D.

AWARD

The Central Government in the Ministry of Labour vide notification No. L-42012/90/2001-IR(CM-II) dated 10.10.2001 referred the following industrial Dispute to this tribunal for the adjudication:—

> "Whether the action of the managment of Archaeological Survey of India in terminating the services of Smt. Usha Rani, daily wages sweeper w.e.f. 6.6.2000 is legal and justified? If not, to what relief she is entitled to?"

On 29-10-2001 reference was received in this tribunal. Which was register as I.D. No. 61/2001 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 09.11.2001. Wherein he stated as follows:—

1. That I was employed by the Management as a Peon-cum-Sweeper, w.e.f. 1st of January, 1999, and was getting the salary on the basis of the total days worked in a calendar month. Necessary documents to this effect i.e. the sheet Showing the certain amount of arrear paid to the undersigned workman, proving the above fact is enclosed herewith.

   The fact of appointment of the workman has also been admitted by the Management, in their letter dt. 24.10.2000 duly signed by the Dy. Director (Accounts) and addressed to the ALC (copy enclosed.)

It is perstinent to mention here that the undersigned workman continued to work with the Department for more than 240 days i.e. 254, and this fact can very well be established from the details of the arrears paid to the workman copy of the arrear sheet are already annexed. As such the basic and fundamental principle of Employer and employee relationship is established on record.

2. That suddenly on 6.06.2000 the undersigned workman was dismissed from the services without any justifiable excuse or reason, and instead of serving any written communication, she was simply asked not to come on the next date, since her services are no more required, with the management. It is pertinent to mention here that the removal of the workman from the service in the above manner is clearly against the settled principles of laws, and is also against the natural justice.

3. That it is alleged by the Management that she was terminated because of the alleged misbehavior with one Janki Hinduja, Incharge of the Central Library.

In this connection it is submitted that the Management took the action (uncalled for) only when the workman made a complaint of harassment and physical torture, as well as not acceding to the compulsion of the said Hinduja to the sexual advance/ proposals as made by one Sh. RSP Singh, through her.

4. The removal of the workman is unjustified and illegal on the following points:

(i) Had there been any complaint of misbehavior of otherwise, the management should have given an opportunity to the workman to explain here conduct, but the same is not done in the present case?

(ii) No enquriy of whatsoever nature has been conducted, and no opportunity has been provided to the workman.

(iii) No order of termination/removal from service has been passed.

(iv) Hon'ble Supreme Court in catena of judgments has held that before passing any such order, reasonable opportunity has to be given to the workman, and if no opportunity has been given, the order is unjustified and illegal.

Since the order of removal is unjustified, without any reasonable cause, and is illegal, the workman is entitled to:

(i) reinstatement with immediate effect;

(ii) release of salary from May, 2000 to till date with all consequential benefits;

It is further submitted that the order is further illegal especially in view of the fact that the workman has worked for more than 240 days, and had been getting the wages regularly, and the action of the management is uncalled for and is biased one, since the workman made a detailed complaint against the attitude and behavior of one Hinduja, Librarian (Asst.) who was also posted there, and was pressurizing the workman to succumb to the proposal of sexual relationship with one Sh. RSP Singh, who was also working in the same department.

Further the employer-employee relationship is clearly establishment on record.

Reply on behalf of the respondent to the claim filed by the claimant.

1. That the present petition is misuse of the process of law and the same is liable to be rejected on this ground alone.

Reply on Merits:—

1. That in reply to the contents of para No. 1 of the claim/petition, it is submitted that the applicant was engaged purely as a Daily wages Sweeper in the Central Archeological Library National Archives Buildings, New Delhi Few Months. It is vehemently denied that the claimant working as Peon also.

2. That in reply to the contents of para No. 2 of the claim/petition, it is submitted that the workman/claimant was engaged purely as daily wage sweeper as and when required. However, it is wrong to say that her services were illegally terminated on 06.06.2000.

3. That the contents of para No. 3 of the claim/petition are wrong and denied. It is vehemently denied that the claimant has ever completed 240 days of continuous services in a year with the respondent. However, the applicant be put to strict proof of the averments made therein.

4. That the contents para No. 4 of the claim/petition need no reply from the respondent being matter of record.

5. That the contents of para No. 4 of the claim/petition are wrong and concocted, therefore, the same are vehemently denied. It is worng to say that Ms. Janki Hinduja, Librarian has ever called any workman at her residence. It is relevant to note that the claimant has never made such type of allegations against her superior before her services were dispensed with.

6. That the contents of para No. 6 of the claim/petition are vehemently denied. It is humbly submitted that Ms. Janki Hinduja had submitted here point of view on the allegations of defamatory nature by the claimant to the Under Secretry (vig). It is further submitted that in the said explanation she has denied each and every allegation made by the claimant. It is quite unfortunate on the part of the

daily wages employee to make such type of allegations on a person who is holding the Senior Position in the Department. It is relevant to note here that the claimant misbehaved and used unparliamentary language against said Ms. Janki Hinduja, Librarian.

7. That in reply to the contents of para No. 7 of the claim/petition, it is submitted that whenever, a representation is made by the claimant, action was taken on them by the respondent/management.

8. That the contents of para No. 8 of the claim/petition are not only wrong but by the same she has tried to do character assassination of not only Ms. Janki Hinduja but also of Mr. R.P. Singh, Librarian of another institute. This itself shows what type of a person the claimant is, therefore, her services were righty terminate by management/ respondent.

9. That the contents of para No. 9 of the claim/petition are wrong and denied. It is wrong to say that the termination of the services of the claimant is not against any provisions of industrial Disputes Act, therefore, there is no ground for quashment of the said order of the management/ respondent. It is further wrong to say that the claimant is entitled for reinstatement of her service with back wages. It is pertinent to mention here that in a recent judgment, the Hon'ble Apex Court has said that a daily wage employee or temporary employee has no right to claim regularization or continuation in service even if he/she worked a number of years.

10. That the contents of para No. 10 of the claim/ petition are denied for want of knowledge. However, it is submitted that once the services of a daily wage employee is terminated, then it is not duty of the earlier employer to see whether he/she is unemployed or not.

On the Basis of which he prayed that the claim of the claimant may kindly be rejected being without merit with cost.

Rejoinder to the reply of the management of behalf of workman.

1. That the para No. 1 of the preliminary objection is wrong and denied. It is denied that the present petition is the misuse of the process of law or the same is liable to be dismissed on this ground.

Rejoinder on Merits.

1. That the para No. 1 of the reply needs no replication as the same is the matter of record. However, it is wrong and denied that the workman was not working as Sweeper-cum-peon with the management. It is further denied that the workman was working as Daily Wager Sweeper with the management. The contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct.

2. That the para No. 2 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is denied that the workman has never completed her 240 days of continues service or was engaged purely as daily wager as and when required. It is submitted that the workman was engaged as a regular temporary employee with the management w.e.f. 01.01.1999 and worked with the management till 06.06.2000 when her services were illegally terminated by the management on the false complaint of Smt. Janki Hinduja, Assistant Librarian. It is submitted that the workman has also being paid the arrear of salary as per the recommendations of the various Govt. orders.

3. That the para No. 3 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct.

4. That the para No. 4 of the reply needs no replication being matter of record.

5. That the para No. 5 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is submitted that the workman was working at the residence of Ms. Janki Hinduja as she was her superior and there was no occasion for making any complaint in this regard with the management.

6. That the para No. 6 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is vehemently denied that Ms. Janki Hinduja has submitted the true facts before the Under Secretary (Vigilance) at the time of her inquiry on the complaint of the workman. It is submitted that no wrong doer shall ever admit his or her mistake before his or her superiors and the workman being a weaker section has been made the escape-goat at the whims and fancy of Ms. Janki Hinduja. It is submitted that the inquiry conducted by the management on the complaint of the workman was conducted in a very biased and predetermined manner, which is clear from the language of the para under reply itself. It is vehemently wrong and denied that the claimant/workman has ever used unparliamentry language or misbehaved with Ms. Janki Hinduja during her entire tenure of service.

7. That the para No. 7 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is submitted that though the management has taken action on the complaint of the workman by initiating and enquiry against Ms. Janki Hinduja, but the same was conducted in

a predetermined and a biased manner to save Ms. Janki Hinduja and the workman was made to pay the price for the same by way of termination of her services.

8. That the para No. 8 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is submitted that the workman has stated only true facts in the para under reply. It is vehemently denied that the services of the workman were rightly terminated by the management as alleged in the para under reply.

9. That the para No. 9 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct. It is submitted that as admitted by the management itself the termination of the workman was against the provisions of Industrial Disputes Act, therefore, the said order is liable to be quashed by this Hon'ble Court. It is reaffirmed and reasserted that her services with full back wages and continuity of service. However, the management has tried to twist the judgment of the Hon'ble Apex Court to their benefit.

10. That the para No. 10 of the reply is wrong and denied and the contents of the corresponding para of the claim petition in this regard is reaffirmed as true and correct.

On the Basis of which she prayed that the ward may kindly be passed in terms of the prayer made in the claim petition, in the interest of justice.

My Ld predecessors has not framed any issued but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:

> "Whether the action of the management of Archeological Survey of India in terminating the services of Smt. Usha Rani, daily wages sweeper w.e.f. 6.6.2000 is legal and justified? If not, to what relief she is entitled to?

In support of its case workman filed affidavit of Smt. Usha Devi,. Which having following contents:—

1. That I affirm that I am the claimant in the above petition and an competent to swear the present affidavit as I am well conversant with the facts and circumstances of the case.

2. That I affirm that the deponent had been employed by the management as a Peon-cum-Sweeper w.e.f 01.01.1999. her last drawn salary was Rs. 2,268/- per month.

3. That I affirm that the deponent was in the continuous employment of the management since that date till she was illegal teminated from her services on 06.06.2000.

4. That I affirm that inspite of the fact, the deponent had completed 240 days of continuous service with the management, the complainant was not confirmed in the service by the Management to deprive the deponent from other benefits such as regular pay scale P.F., Bonus etc.

5. That I affirm that the deponent was posted at Indian Archeological Library under the direct control of Ms. Janki Hinduja, Assistant Librarian.

6. That I affirm that the said Ms. Janki Hinduja, used to call the deponent at her residence situated at D-2, Sector-2, Goal Market, New Delhi as a help in her domestic work and the deponent done till the work even at the residence of the said Ms. janki Hinduja without any complaint.

7. That I affirm that one day when the deponent went to the residence of the said Ms. Janki Hinduja after receiving a call from her, she found one another person present there and the deponent was asked to have illicit relations with him by said Ms. Janki Hinduja and when the deponent refused to follow her instructions the said Ms. Said Ms. Janki Hinduja openly threatened the deponent that if the deponent will not follow her order, she will not allow her to continue in her job and only because of this reason the deponent was terminated from her services by the management on the false complaint of Ms. Janki HInduja in which she leveled the false allegations of gross insubordination against the deponent without assigning any reason or holding any enquiry in the matter. Even the deponent has not been served with any order of termination, but has verbally been instructed by the management not to come on job from the next date i.e. from 07.06.2000.

8. That I affirm that the deponent also made several representations to the various officials of the management, but of no use. After that a demand notice was served upon the management by the deponent, but the said notice has not been even replied by the management till date. The copy of the representation made to the Hon'ble Minister Culture and Sports on 01.01.1999 is Ex. WW1/A and postal receipt of the same is Ex. WW1/B and the AD card is EX. WW1/C. The copy of the complaint made to the Chairman National Commission for SC/ST dated 13.6.2000 is Ex. WW1/D and the postal receipt of the same is Ex. WW1/E and the AD card is Ex. WW1/F.

9. That I affirm that the management has dismissed the services of the deponent illegally, arbitrarily and by putting all the laws and rule on one side only because of the reasons that the deponent has refused to surrender to the illegal demand of her superior Ms. Janki Hinduja to have illicit relations with Sh. R.P.

Singh, Librarian of the Indian Archaeological Library, Delhi.

10. That I affirm that the said termination of the deponent by the management is against the provisions of Section 25F, 25G & 25H of Industrial Dispute Act, 1947 and hence, is liable to be quashed and the deponent is entitled for reinstatement of her services with continuity in services and with back wages.

11. That I affirm that after the termination from the services with the management the deponent could not get any other employment in spite of the best efforts and is still un-employed and is not having any source of income to meet with the demands of herself and her family.

12. That I affirm that I have stated all the true facts in my statement of claim in respect of the incident occurred with me at the residence of Ms. Janki Hinduja. I further affirm that the inquiry conducted by the management against Ms. Janki Hinduja on my complaint was a sham inquiry and was conducted in a biased and predetermined manner. I further affirm that I have completed 240 days of my continuous service with the management and I have also been paid the arrears of the salary for the year 1999-2000 as per the Govt. Notifications. The copy of the register of the arrears of salary is annexed as Ex. WW1/G.

13. That my claim petition is correct, which bears my signature at point A and I am entitle for reinstatement in the services with immediate effect, with continuity of the service and full back wages.

Her affidavit was tendered on 10.01.2008. She was cross-examined on the same day.

I tender my affidavit by way of evidence and the same is exhibited as Ex. WW1/1 and bears my signatures at Point A and ?B. I also rely upon documents exhibit WW1/A to WW1/I.

Cross-examination is as follow:

It is correct that was engaged by the management as daily wager sweeper.

I was posted at Archaeological Library.

I was transferred from Central Archaeological Library to Old Fort.

While I was posted at Library, I was working under the supervision of Ms. Janki Hinduja.

It is wrong to suggest that Ms. Janki Hinduja made any complaint either orally or in writing against me.

It is wrong to suggest that I have ever misbehaved or abused Ms. Janki Hinduja.

It is wrong to suggest that I have made the complaints against Ms. Janki Hinduja & Shri R.S.P. Singh only after I was removed from the services.

However it is correct to say that prior to the said complaint I have never complained against them in writing but orally informed the Higher Officials. (Vol.) Only because of my complaint in Head quarter I was transferred from the Archaeological Library to Old Fort.

It is wrong to suggest that I was transferred from the library because of my misbehavior with Ms. Janki Hinduja.

It is wrong to say that on the basic of the counter complaints, an inquiry was conducted by the director (antiquities and Museums).

It is wrong to suggest that any report on the counter complaints and discontinuation of my services was ever submitted by him.

The copy of the inquiry report submitted by me alongwith my statement of claim before this tribunal dated 4/10/2002 is not correct.

The copy of the inquiry report exhibit WW1/R1 is a forged inquiry report.

It is wrong to suggest that I have not worked for complete 240 days in a year

It is wrong to suggest that I am deposing falsely.

In support of its case management filed affidavit of Smt. Ranbir Kaur. Which having following contents:-

1. That I am well conversant with the facts and circumstances of the case in my official capacity and also competent to swear the present affidavit on behalf of the management/respondent.

2. That the applicant was engaged purely as a Daily Wages Sweeper in the Central Archaeological Library, National Archieves Building, New Delhi for few months.

3. That the claimant never worked as peon in the office of the management.

4. That the workman/claimant was engaged purely as daily wage sweeper as and when required and her services were not illegally terminated on 6.6.2000.

5. That the claimant/workman has never completed 240 days of continuous service in a year as per records available with the respondent/management. However, the claimant/workman be put to strict proof of the averments made in that respect.

6. That Ms. Janki Hinduja Librarian has never called any workman at her residence. It is relevant to note here that the claimant has never made such type of allegations against her superior before her services

were dispensed with, which has also been proved by conducting an inquiry to that effect.

7. That Ms. Janki Hinduja had submitted her point of view on the allegations of defamatory nature by the claimant to the Under Secretary (Vig). It is further submitted that in the said explanation she had denied each and every allegation made by the claimant. It is quite unfortunate on the part of the daily wages employee to make such type of allegations on a person who is holding Senior Position in the Department

8. That the claimant misbehaved and used unparliamentarily language against said Ms. Janki Hinduja, Librarian.

9. That whenever, a representation is made by the claimant, action was taken on them by the respondent/management.

10. That the claimant tried to do character assassination of not only Ms. Janki Hinduja but also of Mr. R.P. Singh, Librarian of another institute. This itself shows what type of a person the claimant is, therefore, her services were rightly terminated by the management/ respondent.

11. That the termination of the services of the claimant is not against any provisions of Industrial Dispute Act, therefore, there is no ground for quashment of the said order of the management/respondent.

12. That the claimant is not entitled for reinstatement of her service with pack wages. It is pertinent to mention here that in a recent judgment, the Hon'ble Apex Court has said that a daily wage employee or temporary employee has no right to claim regularization or continuation in service even if he/she has worked a number of years.

13. That the action of the management/respondent by terminating the services of the claimant is not against the provisions of any section of Industrial Disputes Act, 1947. Therefore, the same are not liable to be quased and she is not entitled for reinstatement of her services.

14. That the claimant/workman has not completed 240 days in a year. Therefore, she is not entitled for any relief whatsoever from this Hon'ble Tribunal and the claim of the claimant be rejected without any merit.

She was cross-examined by Sanjay Kumar.

I am working with the management since last 30 years and since last five years I am on the present post.

I have the knowledge of the present case as the official record.

I know the workman as per record she was working with us.

The workman was appointed as a sweeper with our department but I cannot tell the exact date month and year of her appointment.

I cannot tell whether the workman was appointed with our department on 1st January, 1999.

It is wrong to suggest that the workman has regularly and continuously worked till 6th June, 2000 when her services were terminated. Vol. she has never completed regular 240 days work.

We maintain the muster roll of the daily wagers at their working place which is prepared as per their attendance marked by them in the attendance register. We have to check whether any muster roll was prepared regarding the services of the workman.

In case the muster roll is available the same shall be produced on the next date.

Smt. Janki Hinduja was posted at Central Archaeological Library as Librarian.

It is wrong to suggest that Smt. Janki Hinduja was misusing her post and used to take personal work at her residence from the workman.

It is wrong to suggest the Smt. Janki Hinduja forced the workman that in case she want to become confirm she has to make a illustrate relation with Sh. R.P. Singh.

It is wrong to suggest that since the workman has refused to go before the illegal direction of Smt. Janki Hinduja she got her terminated by making false complaints.

It is correct that no complaint of Smt. Janki Hinduja regarding the misbehavior of the workman in writing has been filed in the Court.

I cannot say whether any written complaint was made against the workman by Smt. Janki Hinduja regarding her misbehavior.

I cannot say whether any memo was issued to the workman regarding her misbehaviour with her superiors.

It is wrong to suggest that the workman was terminated because she has refused to go to illegal demands of Smt. Janki Hinduja and therefore, she made false complaint against the workman rather she was terminated because of her misbehavior with his superiors.

It is correct that the document marked from A1 to A3 are the photocopies of the muster roll of our department for the workman and the same is now exhibited MW1/1 (Colly).

I have no knowledge that Smt. Usha Rani has made any complaints to various authorities regarding the aforesaid incident with her.

I have no knowledge that one of the complaint was made to the Hon'ble Minister of Culture and Sports, GOI and after which a department inquiry was set up after incident.

It is wrong to suggest that I am deposing falsely to benefit the case of the management.

Written Arguments on behalf of the workman are as follow:-

A reference was made by the ministry of Labour, Govt of India, Delhi vide order dated 10.10.2001, thereby referring the aforementioned dispute to this Hon'ble Tribunal for adjudication and to decide that whether the action of the management of Archeological Survey of India in terminating the services of Smt. Usha Rani, Daily Wages Sweeper w.e.f. 06.06.2000 is legal and justified? If not to what relief she is entitled to?

After entering into reference the Hon'ble Tribunal issued notices to the parties and directing the workman to file its claim which was filed by her on 2nd of January, 2006.

As per the statement of claim filed by the workman the brief facts of the case are as under:-

A. That the workman was employed by the management as Peon-Cum-Sweeper w.e.f. 1.1.1999 on Daily wages and her last drawn salary was Rs. 2268/- when she was illegally terminated by the management on 06.06.2000 till then the workman remained in the continuous employment of the management.

B. That inspite of the fact the workman has completed 240 days in continuous service with the management did not confirm the workman, the managemen did not confirm the workman was deprived with her legal rights such as regular pay-scale, P.F., Bonus, Leave encashment etc. The workman was posted at Indian Archeological Library and was under the direct control of Ms. Janki Hinduja, Assistant Librarian of the said Library.

C.The workman used to tell her grievances to said Ms. Janki Hinduja, who taking illegal and undue benefit of her position used to call the workman at her residence for her personal domestic works a D-2, Sector-2, Gole Market, New Delhi and the workman used to do her duties at the Library as well as the residence of Ms. Janki Hinduja with full devotion and sincerity.

D. That one day the workman was called at her residence by said Ms. Janki Hinduja where he found one more person who was introduced by Ms. Janki Hinduja where he found one more person who was introduced by Ms. Janki Hinduja as Sh. R.P. Singh, Librarian of the said Library where the workman was posted and asked the workman that in case she wants to be confirmed in the services of the management she has to establish illicit relations with said Sh. R.P. Singh, who will help her in her confirmation in the services with the management. The workman was shocked to hear the said instructions from Ms. Janki Hinduja and flatly refused to follow her instructions. Hearing the refusal of the workman Ms. Janki Hinduja became furious and she openly threatened the workman that in case she will not follow her instructions, she has to face illegal termination from the services, but the workman refused to bow before her illegal orders and only because of this reason the workman was terminated from the services of the management on a false and frivolous complaint made by Ms. Janki Hinduja leveling false allegations of misbehavior and gross insubordination upon the workman. The workman was illegally terminated by the management wihtout assiging any reason or holding any enquiry even the workman was served with the copy of the termination order and was verbally asked by the management not to come on duty w.e.f. 07.06.2000.

E. The workman made several representations to the various officers of the management, Hon'ble Minister Culture and Sports, Govt. of India, SC/ST Commission and only then a fake enquiry was conducted by the management and without affording any opportunity of being heard to the workman the enquiry was closed. Thereafter, the workman got issued demand notice upon the management but she was not reinstated.

The termination of the workman is violative of Section 25-F, 25G, & 25H of Industrial Disputes Act, 1947 as the management has terminated the service of the workman without paying any retrenchment compensation to the workman and the said termination is liable to be set-aside.

That the workman has completed continuous 240 days in the services of the management, therefore she is entitled to be reinstated in the services as a confirmed employee with full back wages, continuity of service and other benefits.

The management has contested the said reference by filing written statement and evidence and cross-examine the workman. But the management has not even challenged the allegations of the workman during her cross examination or has taken place, thus the allegations of the workman stands proved and the workman is entitled for the reliefs in terms of the reference and the statement of claim filed by her.

Even the management has fialed to examine Ms. Janki Hinduja as its witness but has examined one Smt. Ranbir Kaur, Adminsitrative officer who does not personally know the facts of the case and has deposed as per the official records of the case maintained by the management, thus the evidence led by the said Smt. Ranbir Kaur is hear say evidence and cannot be relied upon. During her cross-

examination she has frankly admitted that she does not have any personal knowledge of the case and giving evidence at the instance of the management as per the official records. Even in her examination-in-chief the said Smt. Ranbir Kaur has not denied the allegations of the workman merely a bald statement in the examination-in-chief that the claimant has never made such type of allegations before his alleged termination has no force and cannot be looked into.

It is, therfore, most humbly prayed that the order dated 06.06.2000 passed by the management thereby illegally terminating the services of the workman may kindly be quashed and the workman may be reinstated in the service of the management with continuity of service and full back-wages.

It is further prayed that since the workman has completed 240 days of continuous services in the service of the management, the management be directed to confirm the workman on the post of Peon-cum-Sweeper.

Written Arguments on behalf of the management are as follow:

1. That the claim of the claimant is misuse of the Process of Law and the same is liable to be rejected on this ground alone.
2. That the claimant was engaged Purely as a Daily Wages Sweeper in the Central Archaeological Library, National Archives Building, New Delhi for few months. However, the claimant/workman had never worked as Peon also, in the Office of Management.
3. That the workman/claimant was engaged Purely as Daily Wage Sweeper as and when required. Her services were never illegally terminated by the Management on 06.06.2000.
4. That the claimant has not ever completed 240 days of Continuous Service in a year with the Management/Respondent.
5. That Ms. Janki Hinduja, Librarian has never ever called any workman at her residence. It is relevant to note here that the claimant has never made such type of allegation against her superio(s) before her services were dispensed with.
6. That Ms. Janki Hinduja had submitted her point of view on the allegations of defamatory nature by the claimant to the Under Secretary (Vig.). It is relevant to note here that in the said explanation, she has denined each and every allegation made by the claimant. It is quite unfortunate on the part of the Daily Wage Employee to make such type of allegations on a person, who is holding the Senior Position in the Department, However, fact of the matter was that the claimant misbehaved and used unparliamentary language against said Ms. Janki Hinduja, Librarian.
7. That whenever, a representation is made by the claimant, action was taken on them by the Respondent/Management.
8. That the claimant has tried to do character assassination of not only Ms. Janki Hinduja but also Mr. R.P. Singh, Librarian of another institute. This itself shows what type of a person, the claimant is, therefore, her services were rightly terminated by the Management/Respondent.
9. That the termination of services of the claimant is not against any provisions of Industrial Disputes Act, therefore, there is no ground for quashment of the said Order of the Management/Respondent. It is humbly submitted that the claimant is not entitled for reinstatement of her service with back wages. It is pertinent to mention here that in a recent judgment, the Hon'ble Apex Court has said that a Daily Wage Employee or temporary Employee has no right to claim regularization or continuation in service even if he/she has worked for a number of years.
10. That once the services of a Daily Wage Employee is terminated, then it is not the duty of the earlier employer to see whether he/she unemployed or not. On the Basis of which she prayed that the claim of the claimant may kindly be rejected being without merit with cost.

A/R for the workman placed reliance on following rulings:—

1. Director, Fisheries Terminal Division

and

Bhikubhai Meghajibhai Chavda
[2009(123) FLR 875]
(Supreme Court)

2. Automobile Association of Upper India

VS

P.O. Labour Court II and Anr.
2006 LLR 851
Delhi High Court

In the light of contentions and counter contentions of Ld A/Rs of the parties I perused the pleading mentioned in the claim statement, written statement and rejoinder as well as evidence of the parties including principles laid down in cited rulings, settled law and relevant provisions of concerned law.

Workman case in that she was appointed as sweeper cum peon by management on 1.1.1999. She worked for more than 240 days continuously. She was terminated on 6.6.2000 without any enquiry. No notice of termination was given to her before her termination cause shown by workman of her termination is that she could not submit herself for sexual

lust to Shri R.S.P. Singh who made such offer through Ms. Janki Hinduja Incharge of Central Library. Hence Management became annoyed and terminated her. Although management alleged that workman was terminated because of the alleged misbehavior with Ms. Janki Hinduja, Incharge of the Central Library.

In support of her case she filed her affidavit and documents including copies of register to show that she completed work of more than 240 days continuously and paid for that for getting benefit of S.25-F of I.D. Act.

Ld. A/R for workman placed reliance on principles laid down in the cited rulings.

While on the other hand Ld. A/R for the management counter contented that workman was casual worker i.e. Sweeper on daily rated wage. She never worked continuously for 240 days in proceeding year or proceedings twelve months hence she is not entitled for any benefit. She misbehaved with Ms. Janki Hinduja Incharge of the Central Library and made false allegations against her that she compelled her to submit her before Sh. R.S.P. Singh for sexual lust.

Management set up enquiry against her which was conducted according to provisions of law and principles of natural justice. Enquiry was decided against her on 4.10.2002 and consequently she was terminated. Copy of Enquiry report is on record. Hence she is not entitled to any relief.

Perusal of reference shown that she was mentioned as Sweeper in it hence her averments relating to peon are wrong and incorrect.

Perusal of statement of claim, rejoinder, and her evidence shows that she could not dare to mention in it that enquiry was conducted and decided against her on 4.10.2002.

It is relevant to mention here that she has not lodged any F.I.R. or instituted any complaint against Ms. Janki Hinduja and Mr. R.S.P. Singh, Non filing of such FIR/ complaint compels me to draw an adverse inference against her.

Perusal of documents filed by workman to show that she was paid payments towards her salary etc. Itself indicates that there is break in working days between every two months hence her work cannot be treated as continuous work of 240 days which is required for benefit of S. 25-F I.D. Act, 1947.

It addition to it management was justified to terminate her on the ground of proved misbehavior with Ms. Janki Hinduja, Incharge of the charge Library after conclusion and decision of enquiry against her. Principles of cited rulings are in-applicable in the instant case.

Hence termination order of workman is just, proper and legal requires no interference.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided against workman Smt. Usha Rani and in favour of management. Which is accordingly decided

Award is accordingly passed.

Dated: 19/12/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डीएमएस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, नई दिल्ली के पंचाट (संदर्भ संख्या 75/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/106/2002-आईआर(सीएम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 75/2002 of the Cent. Govt. Indus. Tribunal-cum Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Delhi Milk Scheme, and their workmen received by the Central Government on 13.01.2014.

[No. L-42012/106/2002-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present:—Shri Harbansh Kumar Saxena

ID No. 75/2002

Sh. Suraj Kumar

Versus

Delhi Milk Scheme, New Delhi

AWARD

The Central Government in the Ministry of Labour vide notification No. L-42012/106/2002-(IR CM-II) dated 28.08.2002 referred the following industrial Dispute to this tribunal for the adjudication:—

"Whether the action of the Manager, Delhi Milk Scheme, West Patel Nagar, New Delhi-110008 in treating Sh Suraj Kumar S/o Munshi as disengaged

w.e.f. 27.08.1999 and after his re-engagement on 29.01.2000, stopping his services verbally all of a sudden w.e.f. 23.09.2000 is legal and justified? If not, to what relief and benefits the workman is entitled to?

On 04.09.2002 reference was received in this tribunal. Which was register as I.D. No. 75/2002 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 10.12.2002. Wherein he stated as follows:—

1. That the above said reference was referred to this Hon'ble Court by the order of Labour Ministry No. L-42012/106/2002-IR(CM-II) dated 28.08.2002.

2. That the workman was appointed by the management as Supply Man and he was working with the management since 01.01.1999 on daily wages of Rs. 96.

3. That the workman was working continuously without any break. There was no complaint, whatsoever, with regard to his work conduct and behavior to the management.

4. That on dated 14.08.1999 workman met with an accident in the due source of his employment on Route No. 43, Bus (Gadi) No. 250, due to this accident workman's left hand bone was broken. Workman was on Medical Leave w.e.f. 14.08.1999 to 24.1.2000 due to his injuries.

5. That on dated 25.01.2000 workman was joined his services after giving Certificate to the management.

6. That Dr. Ram Manohar Lohia Hospital issued him fitness certificate for Light duty, management was annoyed with the workman on Light Duty Certificate. That management confirmed the services of workman Sh. Sushil Kumar, Ajay Kumar, Rajender Kumar and Sunil Kumar, all they were appointed besides him, when workman demand equal salary and arrears of salary as they were getting, management terminated the services of the workman on dated 23.09.2000 without any notice.

7. That the management was not paid the wage of Medical Leave period w.e.f. 14.08.1999 to 24.01.2000 and nor any compensation of his injuries.

8. That the workman served a Registered/A.D. Demand Letter dated 30-11-2000 to the management in which he demanded reinstatement in service with full back wages, and wages of Medical Leave period and compensation of injuries but management neither replied nor took him back on his duty.

9. That this act of the management is clear-cut violation of Sec. 25F of I.D. Act 1947 as the management has neither given any notice before terminating the services of the workman nor one month salary in lieu thereof.

10. That this act of the management is against the law and principle of Natural Justice.

11. That the workman filed a statement of claim before the Conciliation Officer, Carzon road, Delhi but conciliation proceedings failed due to unco-operative attitude of the management and now matter has been referred to on the following terms of reference:—

    "Whether the action of the manager, Delhi Milk Scheme, West Patel Nagar, New Delhi 110008 in treating Sh. Suraj Kumar S/o Munshi as disengaged w.e.f. 27/08/1999 and after this re-engagement on 29-01-2000, stopping his services verbally all of a sudden w.e.f. 23/09/2000 is legal and justified? If not, to what relief and benefits the workman is entitled to?

12. That the workman is totally unemployed and has no source of income. He kept trying to get himself gainfully employed but could not get any suitable job despite his efforts.

13. That neither any enquiry nor any show cause notice was served before terminating the services of the workman.

On the Basis of which he prayed that this Hon'ble Court may kindly be pleased to pass an award in favour of the workman and direct the management to reinstate the workman with full back wages and continuity in service and with all terminal benefits thereto and to pay the wages of Medical leave w.e.f. 14/08/1999 to 24/01/2000 to the workman.

Any other order or direction which his Hon'ble Court may deem fit and proper in the circumstances of the case may also please be awarded in favour of the workman and against the management.

Against claim statement management filed following written statement on 24.07.03:—

Para 1 The case of Shri Suraj, V/s Delhi Milk Scheme was referred by Hon'ble Court by the order of Labour Ministry No. L. 42012/106/2002-IR(CM)-II dt. 28th August, 2002 and therefore, it is under consideration for compensaiton etc.

Para 2 Shri Suraj was engaged as a Badli Worker in Delhi Milk Scheme on the basis of certified standing orders for the employees of D.M.S. issued in 1962 vide No. 185-1(9)/49/60-LS dt. 15th June, 1962 w.e.f. 1.1.99. His daily wages were paid on the basis of rates notified by Central Government from time to time.

Para 3 The contention of the Badli worker that he worked regularly w.e.f. 1.1.99 without any break is not based on facts. It can be seen from the following statement that he has a habit of taking leave and remaining absent from Office on one ground or the other:—

(a)	January, 1999	:	Worked for 7 days
(b)	February, 1999	:	Worked for 17 days
(c)	March, 1999	:	Worked for 9 days
(d)	April, 1999	:	Worked for 15 days
(e)	May, 1999	:	Worked for 29 days
(f)	June, 1999	:	Worked for 26 days
(g)	July, 1999	:	Worked for 5 days
(h)	August, 1999	:	Worked for 4 days
(i)	September, 1999	:	NIL
(j)	October, 1999	:	NIL
(k)	November, 1999	:	NIL
(l)	December, 1999	:	NIL
(m)	January, 1999	:	Worked for 2 days
(n)	February, 1999	:	Worked for 20 days
(o)	March, 1999	:	Worked for 2 days
(p)	April, 2000	:	Worked for 6 days
(q)	May, 2000	:	NIL
(r)	June, 2000	:	Worked for 15 days
(s)	July, 2000	:	Worked for 14 days
(t)	August, 2000	:	Worked for 23 days
(u)	September, 2000	:	Worked for17 days

Para 4 It is fact that Shri Suraj with met with an accident on 14.08.99 while working in D.M.S. But no intimation for this accident was sent by the worker till 20th Oct., 1999 i.e. after a gap of 66 days, which is considered unreasonable and with a malafide intention and Shri Suraj Kumar was not entitled for any kind of leave as he is Badli worker and gets salary on the basis of number of days for which he works. According to certified standing orders, Rule 10 which provide that workers will be governed with the provisions of the factories Act, 1948 and grant of leave to a worker shall depend on the exigencies of the establishment and shall be at the discretion of the Chairman. The worker is required to apply for leave at least 7 days before the day from which leave is to commence, except in urgent cases or unforessen circumstances when it may not be possible to do so. He sent intimation on 20.10.99 i.e. more than 66 days and such a period cannot be considered reasonable on any grounds. The first application was given on 20th October, 1999 in respect of period 14th August, 1999 to 29th Jan., 2000, i.e. after an absence of 168 days. The certified standing orders provided under Rule 10(E) that's worker remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to lose his lien on his appointment unless he returns witin 8 days of the expiry of the sanctioned leave and explains to the satisfaction of the authority granting leave, his inability to resume duty immediately on the expiry of the leave. In case the workman looses his lien on his appointment, he shall be kept on the Badli list. The Factories Act, 1948 provide under Rule 79 that-

> "Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated @ 1 day for every 20 days of work performed by him during the previous calender year".

In 1999, Sh. Suraj Kumar has worked only for 112 days from 1st January, 1999 to 14th August 1999 and therefore, would have been entitled for not more than 5 days leave. Therefore remaining absent for 168 days without any avoid grounds and without any intimation is considered illegal and Sh. Suraj is not eligible for benefit of any kind of leave which is not admissible under the Factories' Act, 1948 (Rule 79).

However, it is unfortunate that he met with an accident and this period cannot be regularized by grant of any kind of leave and he is not eligible for pay during this period and DMS has taken him back as a Badli worker on his becoming fit to resume duty on 28th January, 2000 as per provisions of the certified standing orders of DMS.

Para 5 Sh. Suraj has wrongly stated that he joined duty on 25th January, 2000. He reported for duty on 28th Jan, 2000 along with fitness Certificate and he was allowed to continue as Badli worker in Delhi Milk Scheme.

Para 6 It is wrong to say that DMS was annoyed with him on the basis of Medical Certificate which provide that he should be allowed to do light duty in DMS. The Government has removed the subsidy of milk from 1st March, 2000 and Badli workers were removed from service in large scale and finally, the services of Sh. Suraj were terminated on 23.09.2000 along with other Badli workers of DMS and only those Badli workers were allowed to work in DMS who had completed 240 days in previous years to be considered for regularization against regular vacancies. Since Sh. Suraj had not worked for 240 days either in 1999 or in 2000, he was not eligible for regularization under the Industrial Dispute Act, 1947 which provides under Section 25(b) that's a workman shall be in a continuous service for a period of 12 calendar months preceding the date with reference to calendar of 240 days is to be made."

Para 7 Shri Suraj has not applied for leave on medical grounds within prescribed time limit under the certified standing order as leave application for period of 14th August, 1999 to 24th January, 2000 was, made after a lapse on 66 days which is considered unreasonable with the malafide intention on the part of applicant and DMS cannot be held responsible for such lapse on the part of the candidate. Further, no benefit of leave is admissible to Sh. Suraj under factories Act, 1948 beyond 5 days leave as provided in Section 79 of factories Act, 1948. The question of compensation for meeting with an accident and physically loss was not brought to the notice of DMS within a reasonable time. Therefore, DMS cannot he held responsible for compensation of his injuries which could have been due to some other reasons which were not brought to the notice of DMS for a period of 66 days w.e.f. 14th August, 1999 to 20.10.99.

Para 8 Due to withdrawal of the subsidy by Government w.e.f. 1st March, 2000 whereby sale of DMS milk was reduced from 4 lakh Itrs./day to 2 lakh Ltrs./day and thereby all the Badli Workers were not required and their services were terminated except those who had completed 240 days continuous service in DMS. No discrimination to Shri Suraj has been made by the DMS and therefore, there is no question of allowing him to continue as Badli worker in DMS. Most of the Badli Workers had gone to Central Administrative Tribunal, High Court and Supreme Court and their cases have been implemented based on the judgement given by the respective Court to the full satisfaction of the Court. Sh. Suraj has filed a case before the Labour Court and it is for Labour Court to decide whether he is eligible for any benefit under the circumstances and keeping in view the provisions of the factories Act, 1948 and Industrial Dispute Act, 1947.

Para 9 The protection of Section 25F of I.D. Act, 1947 is available to those persons who have in continuous service for not less than one year. Sh. Suraj Kumar has only served 209 days service in DMS during January, 1999 to September, 2000, therefore, this protection is not available to him.

Para 10 Principles of Natural Justice applies both to the Management i.e. DMS and to the applicant and if applicant is trying to have a malafide intention for not intimating DMS for his absence for 67 days and than claims before a Labour Court for compensation and regularization is not coming with the cleans hands and therefore, he has no right to ask for Industrial Justice. The Management has acted as per provisions of Factories Act, 1948, and Industrial Dispute Act, 1947 and if Labour Court thinks something wrong has been done, they may give appropriate directions mentioning the rules and regulations under which such thing is permissible.

Para 11 It is a matter of fact and full proceedings are available with the Labour Court and they may decide on consider the case accordingly.

Para 12 DMS can employ Bedli workers on regular jobs once they compete 240 days work and kept the conditions laid down in Industrial Dispute Act, 1947 Factories Act, 1948. It is agreed that there is a large scale unemployment in the market and DMS cannot solve problem of all Badli workers who have not completed 240 days work in DMS and their services were terminated. It may be indicated that around 150 Badli Worker's services were terminated during 2000 on various dates due to reduction of DMS sale who had not completed 240 days work.

Para 13 No Show Cause Notice was served before terminating the services of the workman was due to the directions of Ministry of Agriculture to reduce the man-power which is not required after withdrawal of the subsidy w.e.f. 1st March, 2000 and consequential reduction of sale of 4 lakh Ltrs./days to 2 lakh liters per day.

The services of 150 Badli workers were terminated and they had gone to CAT, High Court and Supreme Court and no Court has interfered on this ground that show Cause was served.

It is, therefore, requested that DMS is unable to take Sh. Suraj in service on regular basis as he has not completed 240 days work and also not liable for any compensation due to the reasons of alleged accident on 4th Aug., 1999 for his absence without any intimation for a period of 66 days which is not considered proper unless he has a malafide intention to hide factual thing from the Court as well as from DMS.

However, DMS will abide by any direction given by the Labour Court in this case.

Reply of the written statement on the behalf of the workman filed on 20.10.03 as follows:—

1. Para The case of Sh. Suraj Vs. D.M.S. was reffered by hon'ble court by the order of labour ministry No. L-42012/106/2002-IR(CM)-2 dated 28.08.02 and therefore, It is under consideration for illegal termination, all terminal benefits, pay the wages of medical leave w.e.f. 14.08.99 to 24.01.01 to the workman. And the regularization.

2. Para. It is denied that Sh. Suraj was engaged as Badli worker in D.M.S. It is stated that the workman was appointment by the management as supply man since 01.01.1999 on daily wages of Rs. 96/-.

3. Para It is denied that Sh. Suraj was engage as Badli worker in D.M.S. It is stated that workman was working continously without break and it is wrong to say that workman has a habit of taking leave and

remaining absent from office. There was no complaint. That on dated 14.08.99 workman met with an accident in due course of employment, and workman was on medical leave w.e.f 14.08.1999. to 24.01.2000 due to injuries.

4. Para It is wrong to say that Suraj had not informed for his accident. He informed D.M.S time to time for medical leave. As a result the workman was entitled to reinstatement with full back wages. The accident of workman was during the period 01.03.1999 to 18.03.1999 to 14.10.99, 14.10.1999 to 30.11.1999, and 30.11.99 to 24.01.2000 after that workman joind his duty with fitness certificate on date 25.01.2000 for the joining the duty. And the workman worked during the period 25.01.2000 to 22.09.2000 after that management terminated service of the workman on dated 23.09.2000 without any notice and any enquiry.

5. Para It is wrong to say that workman reported for duty on 28.01.2000 alongwith medical fitness certificate. It is stated that workman reported for duty on 25.01.2000 alongwith fitness certificate.

6. Para It is denied that workman had not completed the 240 days in the year. It is stated that workman had completed 240 days alongwith medical leave. He entitled tor egularization under the ID Act. After accident workman recommended Light work duty by the Dr. R.M.L. Hospital. This time workman is totally unemployed and also disable. But the management terminated the service of workman on dated 23.09.2000. Management neither gave any compensation for medical leave nor gave him for regularization. Here is necessary to mention that workman appointed after the workman Sh. Suraj and Still working with the management and their service has been regularize by the management. It is against the Law's against the natural Justice.

7. Para. It is denied that workman has not applied for leave on medical ground. It is stated that the workman has applied for leave on medical ground and leave application was duty received by DMS. The accident of workman was during the employment that is why DMS is responsible for this. And DMS is liable for compensation for this accident and regularisation once again.

8. Para Suraj had completed Morethan 240 days if his service including medical leave with the management. But the management did not accept this. Therefore this case was referred on this Hon'ble Court by the central labour commissioner for decision. This is clear violation of 25 (F) I.D. Act 1947. Because of them management terminated the service of workman without giving any notice, compensation or domestic enquiry.

9. Para the protection of section 25-F of I.D. Act is available to those person who have illegal terminated by the management without giving any notice, compensation, workman had completed above 240 days service in a year.

10. Para of written Statement as mention is working and denied. Principle of natural justice applied only the applicant, that the management is trying to have a malafide intention because of management was harassing the workman when the workman able to work that condition management offered the work, when the workman disable to work that condition management was terminated the workman (when the workman during the course of employment accident) this is the against the natural justice. It is vehemently denied that workman did not applied for leave, so there is no malafide exhited of the workman.

11. Para It is matter of fact and full proceeding are available with the labour court and they may decide and consider the case accordingly. That para is not contradicted so there is no need to reply.

12. Para This para is wrong and denied and the contents of the corresponding para of statement of claim are reaffirmed being correct.

13. Para this para is wrong and denied and the contents of the corresponding para of statement of Claim are reaffirmed being correct. No show cause notice was served before terminating the services of the workman by the management.

On the basis of contents mentioned in aforesaid paragraphs Labour/Claimant prayed that this Hon'ble Court may kindly be pleased to grant relief as has been prayed for in the statement of claim.

Out of pleadings of parties following issue has been framed by my Ld. Predecessor on 16/06/05:—

1. As in terms of Reference.

Workman in support of his case filed evidence where-in he stated as follows:—

1. That the deponent being the workman in the above noted matter and well conversant with the facts of the case and competent to swear the same.

2. That the deponent was appointed by the management as Supply Man and he was working with the management since 1.01.1999 on daily wages of Rs. 96/-.

3. That the deponent was working continuously without any break. There was no complaint whatsoever with regard to his work and behaviour to the management.

4. That on dated 14.08.1999 deponent met with an accident in the due course of his employment on

Route No. 43, Bus (Gadi) No. 250. Due to this accident deponent's left hand bone was broken. Deponent was on Medical Leave w.e.f. 14.08.99 to 24.01.2000 due to his injuries.

5. That on dated 25.01.2000 deponent was joined his service after giving fitness Certificate to the management.

6. That Dr. Ram Manohar Lohia Hospital issued him fitness certificate for Light duty. Management was annoyed with the deponent on Light Duty Certificate. That Management confirmed that service of colleague workmen Sh. Sushil Kumar, Ajay Kumar, Rajender Kumar and Sunil Kumar, all they were appointment besides him. When deponent demanded equal salary and arrears of salary as they were getting management terminated the service of the deponent on dated 23.09.2000 without any Notice and reason.

7. That the management did not pay the wage of Medical Leave period w.e.f. 14.1.2000 and nor any compensation of his injuries. The management did not include the Medical Leave in its Attendance Register from 01.03.1999 to 18.03.1999 to 24.01.2000. When the deponent filed the case in C.W.C. Act, then the management accepted that accident was occurred during the employment and management paid the compensation Rs. 9468/- according to C.W.C. Order dated 05.04.2004.

8. That the deponent filed the List of Document Hon'ble Court, which are detailed given below:—

That the deponent was on Medical Leave on dated 1.03.1999 to 19.03.1999 which is exhibit WW1/1. Accident form fill up by the management on dated 17.08.1999 which is exhibit WW1/2, Letter of Staphana Anubhag-III on dated 28.09.1999 which is exhibit WW1/3, Medical Leave on dated 14.08.1999 to 14.10.1999 which is exhibit WW1/4, Ram Manohar Lohia Hospital's OPD Slip dated 4.09.1999 which is exhibit WW1/5, Medical Leave dated 14.10.1999 to 46 days which is exhibit WW1/6, Meidal Leave on dated 30.11.999 to 25.1.2000 which is exhibit WW1/7, Fitness Certificate dated 18.01.2000 which is exhibit WW1/8, Letter dated 24.01.2000 which is exhibit WW1/9, Letter of workman for G.M. for Light Duty on Dated 3.3.2000 which is exhibit WW1/10. Casual Leave on during 24.07.2000 to 31.07.2000 which is exhibit WW1/11, Application for Medical Compensation during the Medical Leave which is exhibit WW1/12, Letter of workman for D.G.M. for Light Duty on dated 21.09.2000 which is exhibit WW1/13, Letter of workman for G.M. for Light Duty on dated 22.09.2000 which is exhibit WW1/14, Slip if Statement which exhibit WW1/15, Statement showing of workman for going and coming which is exhibit WW1/16, Copy of Demand Notice on dated 30.11.2000 which is exhibit WW1/17, Copy of A.D. Card and Receipt which is exhibit WW1/18, and WW1/19, Copy of Statement of Claim of Conciliation which is exhibit WW1/20, Reply of Management which is exhibit WW1/21, Rejoinder of workman on dated 26.04.2001 which is exhibit WW1/22, Rejoinder of Management Which is exhibit WW1/23, Reply on the Rejoinder of Management on dated 19.06.2001 which is exhibit WW1/24, Reply on dated 19.06.2001 from management which is exhibit WW1/25, Reply form workman on dated 23.07.2001 which is exhibit WW1/26, List of Document of details on dated 18.08.2001 which is exhibit WW1/27, Disability Certificate of workman on dated 08.05.2002 which is exhibit WW1/28.

9. That the deponent served a Registered/A.D. Demand Letter dated 30.11.2000 to the management in which he demanded reinstatement in service with full back wages and wages of Medical Leave period and compensation of injuries but management neither replied nor rook him back to his duty.

10. That this act of the management is clear-cut violation of Section 25F and 2[00] of the I.D. Act 1947 as the management has neither given any notice before terminating the service of the deponent nor one month salary in lieu thereof.

11. That this act of the management of against the law and principal of Natural Justice.

12. That the deponent filed a statment of claim before the Conciliation Officer, Carzon Road, Delhi but conciliation proceedings failed due to uncooperative attitude of the management and now matter has been referred to on the following terms of reference:—

"Whether the action of the Manager, Delhi Milk Scheme, West Patel Nagar, New Delhi 110008 in treating Sh. Suraj Kumar S/o Munshi as disengaged w.e.f. 27/08/1999 and after his re-engagement on 29-01-2000, stopping his services verbally all of a sudden w.e.f. 23/09/2000 is legal and justified? If not, to what relief and benefits the workman is entitled to?

13. That the deponent is totally unemployed and has no source of income. He kept trying to get himself gainfully employed buy could not get any suitable job despite his best efforts because of injury in his left hand.

14. That neither any enquiry nor any show cause notice was served before terminating the service of the deponent.

He was cross-examined by Sh. Bhisham Dev Mund A/R for the management on 20.02.06 as follow:—

I was not given any appointment letter. It is correct that I have worked for two days in a month sometimes 17 days in a months and sometime 10 days in a month. It is correct that I was assigned duties/ work as per the requirement of the management and payment was made accordingly. It is incorrect to suggest that I was not required to move an application for leave as and when I wanted to be on leave. It is incorrect to suggest that I did not inform the management of the accident immediately. I did not get myself examined from the Doctor of them management when I received the injuries. Vol. that I got myself medically treated from Ram Manohar Lohia Hospital. I was admitted in the hospital through the management. I remained admitted in the hospital for about 20 days and I received treatment from the said hospital for five month and 14 days. I do not posses any other document except the fitness certificate files in this case. (at this stage deferred for further cross-examination).

Further cross-examination was conducted on 08.08.2006 by Sh. Bhisham Dev Mund A/R for the management.

Cross examination as follows:—

I cannot produce any document showing that I remained admitted in R.M.L. for treatment as stated by me on previous. Vol. that I have already filed relevant documents including M.L.C. from R.M.L. Hospital and the same be read in evidence. I cannot show any document that I have worked continuously as deposed to in my affidavit. I did not move any application for medical leave as I suffered accident on duty. It is incorrect that I was engaged on daily wages. It is incorrect to say that daily wager is required to submit leave application on medical ground at least 5 to 7 days before going on leave, as per rule. I have informed the respondent D.M.S. on 14.08.99 by way of filling form. I have suffered fracture in my Arm (left arm). It is correct that I did not file joining report before 25.01.2000 Vol. I was not medically fit to joint duty as per the opinion of the Doctor concerned. I do not know if many workers were disengaged by the management respondent on 1.03.2000 on account of withdrawal of subsidy of milk. It is incorrect to suggest that I have not completed 240 days of work in any year including the year 1999 and 2000. It is incorrect to suggest that I have not worked for 240 in the year 1999 or in the year 2000. I am not doing any work at present I am without work and remain at home. Vol. I am in search of the job. My father is maintainaing me. It is wrong to suggest that I am deposing falsely or that I am not entitled to the relief claimed.

In support of its case management filed affidavit of Shri Ashok Bansal. Dy. General Manager (Admn.) West Patel Nagar. DMS. New Delhi on 6.1.2007 is as follow:—

1. That the deponent is an officer, working as Dy. G.M. (Admn.) of the management at the above said address and is well conversant with the facts and circumstances of the case as per documents and record available as well as duly authorized and competent to swear this affidavit.

2. That the deponent states on solemn affirmation that Sh. Sujar was employed as a Badli Worker in Delhi Milk Scheme on the basis of certificated standing order for the employers of D.M.S. issued in 1962 vide No. 185-119/49/6-0-LS dt. 15th June, 1962 w.e.f. 01.01.1999. Certified standing orders in Exhibit MW1/1.

3. That the deponent states on solemn affirmation that the contention of Badli workers that he worked regularly w.e.f. 01.01.99 without any break is not based on fact. It can be seen from the following statement that he has a habit of taking leave and remaining absent from office on one ground or the other.

(a)	January, 1999	:	Worked for 7 days
(b)	February, 1999	:	Worked for 17 days
(c)	March, 1999	:	Worked for 9 days
(d)	April, 1999	:	Worked for 15 days
(e)	May, 1999	:	Worked for 29 days
(f)	June, 1999	:	Worked for 26 days
(g)	July, 1999	:	Worked for 5 days
(h)	August, 1999	:	Worked for 4 days
(i)	September	:	NIL
(j)	October	:	NIL
(k)	November, 1999	:	NIL
(l)	December, 1999	:	NIL
(m)	January, 1999	:	Worked for 2 days
(n)	February, 1999	:	Worked for 20 days
(o)	March, 1999	:	Worked for 2 days
(p)	April, 2000	:	Worked for 6 days
(q)	May, 2000	:	NIL
(r)	June, 2000	:	Worked for 15 days
(s)	July, 2000	:	Worked for 14 days
(t)	August, 2000	:	Worked for 23 days
(u)	September, 2000	:	Worked for 17 days

Copy of Statement of his engagement is Exhibit MW1/2.

4. That the deponent states on solemn affirmation that it is a fact that Sh. Suraj met with an accident on 14.08.99 while working in D.M.S. but no intimation for his accident was sent by the worker till 20th October, 1999 i.e. after a gap of 66 days which is considered unreasonable and with malafide intention and Sh. Suraj Kumar was not entitled for any kind of leave as he is a Badli worker and gets salary on the basis of number of days for which he works. Accordingly to certified standing Order, Rule 10 which provide that workers will be governed with the provisions of the Factories Act, 1948 and grant of leave to a worker shall depend on the exigencies of the establishment and shall be at the discretion of the Chairman. The workers is required to apply for leave at least 7 days before the day from which leave is to commence, except in urgent case or unforeseen circumstances when it may not be possible to do so. He sent intimation on 20.10.1999 i.e. more than 66 days and such period cannot be considered reasonable on any ground. The first application was given on 20th October, 1999 in respect of period 14th August, 1999 to 14 October, 1999 but the candidates has not reported for duty. Next leave application was received on 25th January, 2000 for the period of 30.11.1999 to 25.01.2000 during which he has not reported for duty. He reported for duty finally on 29th January, 2000, after being absent from 14 August, 1999 to 29th Jan. 2000 *i.e.* after an absence of 168 days. The certified standing orders provides under Rules 10 (E) that's worker remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to lose his lien on his appointment unless, he returns within 8 days of the expiry of the sanctioned leave and explain to the satisfaction of the authority granting leave, his inability to resume duty immediately on the expiry of the leave. In case the workman looses his lien on his appointment he shall be entitled to be kept on the Badli list. The Factory Act 1948 provide under Rule 79 that, "Every worker who has worked for a period of 240 days or more in a Factory during a Calendar Year, shall be allowed during the subsequent Calendar year, leave with wages for a number of days calculated @ 1 day for every 29 days of work performed by him during the previous calendar year.

5. That the deponent states on/solemn affirmation that in 1999, Shri Suraj Kumar has worked only for 112 days from 1st January , 1999 to 14th August, 1999 and therefore would have been entitled for not more than 5 days leave. Therefore, remaining absent for 168 days without any valid grounds and without any intimation is considered illegal and Sh. Surajpal is not eligible for benefit of any kind of leave which is not admissible under the factories Act. 1948 (Rule79).

6. That the deponent states on solemn affirmation that he met with an accident and this period cannot be regularized by grant of any kind of leave and he is not eligible for pay during this period and DMS has taken him back as a Badli worker on his becoming fit to resume duty on 29th January, 2000, as per provisions of entitled standing order of DMS.

7. That the deponent states on solemn affirmation that Shri Suraj has wrongly stated that he joined duty on 25th January, 2000. He reported for duly on 29th January, 2000 along with fitness certificate and he was allowed to continue as Badli workers in Delhi Milk Scheme.

8. That the deponent states on solemn affirmation that it is wrong to say that DMS was annoyed with him on the basis of Medical Certificate which provide that he should be allowed to do light duly in DMS. The Government has removed the subsidy of Milk from Ist March, 2000 and Badli workers were removed from services in large scale and finally the services of Shri Suraj were terminated on 23.9.2000 along with other Badli workers of DMS and only those Badli workers were allowed to work in DMS who had completed 240 days in previous years to be considered for regularization against regular vacancies. Since Sh. Suraj had not worked for 240 days either in 1999 or 2000, he was not eligible for regularization under the Industrial Dispute Act. 1947 which provides under Section 25(b) that's a workman shall in a continuous service for a period of 12 calendar months proceedings the date with reference to calendar of 240 days is to be made.

9. That the deponent states on solemn affirmation that Sh. Suraj has not applied for leave on medical ground within prescribed time limit under the certified standing order as leave application for period of 14th August, 1999 to 24th January, 2000 was made after a lapse of 66 days which is considered unreasonable with malafide intention on the part of applicant and DMS cannot be held responsible for such lapse on the part of the candidate. Further no benefit of leave is admissible to Sh. Suraj under Factories Act, 1948 beyond 5 dyas leave as provided in Section 79 of Factories Act, 1948. The question of compensation for meeting with an accident and physically loss was not brought to the notice of DMS within a reasonable time. Therefore, DMS cannot be held responsible for compensation of this injuries, Which could have been due to some other reasons which were not brought into the notice of DMS for a period of 66 days *w.e.f* 14th August, 1999 to subsidy

by Government *w.e.f* 1st March, 2000 whereby the sale of DMS Milk was reduced from 4 lakh ltrs./day to 2 lakh ltrs./day and thereby all the Badli Workers were not required and their services were terminated except those who had completed 240 days continuous service in DMS. No discrimination to Shri Suraj has been made by the DMS and therefore, there is no question of allowing him to continue as Badli worker in DMS. Most of the Badli workers had gone to Central Administrative Tribunal, High Court and Supreme Court and their cases have been implemented based on the judgment given by the respective Courts to the full satisfaction of the Court. Sh. Suraj has filed a case before the Labour Court and it is for Labour Court to decide whether he is eligible for any benefit under the circumstances and keeping in view the provisions of the factories Act., 1948 and Industrial Dispute Act, 1947.

10. That the deponent states on solemn affirmation that the protection of Section 25 F of the ID Act, 1947 is available to those persons who have in continues service for not less than one Year. Shri Suraj Kumar has only served 211 days service in DMS during January, 1999 to September, 2000 therefore the protection is not available to him.

11. That the deponent states on solemn affirmation that the Principles of Natural Justice applies both to the Management *i.e.* DMS and to the applicant and if applicant is trying to have a malafide intention for not intimating DMS for his absence for 67 days and then claims before a Labour Court for compensation and regularization is not coming with the cleans hands and therefore, he has no right to ask for Industrial Justice. The Management has acted as per provisions of Factories Act, 1948 and Industrial Dispute Act, 1947 and if Labour Court thinks something wrong has been done, they may give appropriate directions mentioning the rules and regulations under which such thing is permissible.

12. Thal the deponent states on solemn affirmation that it is a matter of fact and full proceedings are available with the Labour Court and they may decide an consider the case accordingly.

13. That the deponent states on solemn affirmation that the DMS can employ Badli workers on regular jobs once they complete 240 days work and kept the conditions laid down in Industrial Dispute Act, 1947 and Factories Act, 1948. It is agreed that there is a large scale unemployment in the market and DMS cannot solve problem of all Badli workers who have not completed 240 had not completed 240 days work.

14. That the deponent states on solemn affirmation that No Show Cause Notice was served before terminating the services of the workman was due to the directions of Ministry of Agriculture to reduce the man-power which is not required after withdrawal of the subsidy *w.e.f.* 1st March, 2000 and consequential reduction of sale of 4 lakh ltrs./day to 2 lakh litres per day.

15. That the deponent states on solemn affirmation that the services of 160 Badli workers were terminated and they had gone to CAT High Court and Supreme Court and no court has interrupted on this ground that Show Cause Notice was served.

17. That the deponent further states that the management of DMS is unable to take Sh. Suraj Kumar in service on regular basis due to the above stated facts and also as he has not completed 240 days and also is not entitled for any compensation due to the reasons of the alleged accident on 04.08.1999 for his absence without any intimation for a period of 66 days, which is not considered proper as per rules.

In Support of his case workman filed following documents as follows:—

1. Medical Leave's Photocopy on dated 1.03.1999 to 18.03.99 which is exhibit W-1.
2. Accident from fill up by the Management on dated 17.08.1999 Photocopy Ex. W-2.
3. Letter of Sthapana Anubhag- III on dated 28.09.1999- Photocopy Ex. W-3
4. Medical Leave's Photocopy on dated 14.08.1999 to 14.10.1999 which is Ex. W-4.
5. Ram Manohar Lohia Hospital's OPD slip dated 04.09.1999 Photocopy which is Ex. W-5.
6. Medical Leave's Photocopy on dated 14.10.1999 to 46 days which is Ex. W-6.
7. Medical Leave's photocopy on dated 30.11.1999 to 25.1.2000 which is Ex. W-7.
8. Fitness Certificate dated 18.01.2000 -Photocopy which Ex. W-8.
9. Letter dated 24.01.2000 in Original Which is Ex. W-9.
10. Letter of workman for G.M. for Light duty on dated 3.3.2000 Original which is Ex.-W-10.
11. Causal Leaves of the workman from 24.07.2000 to 31.07.2000 Photocopy which is Ex. 11.
12. Application for Medical compensation during the medical leave on dated 19.08.2000 in original which is Ex. 12.
13. Letter of workman for D.G.M. for Light duty on dated 21.9.2000 Original which is Ex- W-13.

14. Letter of workman for G.M. for Light duty on dated 22.09.2000 in Original which is Ex. W-14.

15. Slip of Statement -Photocopy Ex. W15.

16. Statement showing of workman for going and coming Photocopy which is Ex.-W-16.

17. Copy of Demand Notice on dated 30.11.2000 in Original Ex. W-17.

18. Copy of A.D. Card and Receipt in Original Ex. W-18 & W- 19.

19. Copy of Statement of Claim of conciliation in original Ex. W-20.

20. Reply of Management in Original Ex. W-2I.

21. Rejoinder of the management on dated 26.04.2001 in original Ex. W-22.

22. Rejoinder of the management on dated 28.05.2001 in Original Ex. W-23.

23. Reply on the Rejoinder of Management from the workman on 19.06.2001 in Original Ex. W-24.

24. Reply on dated 19.06.2001 from the management on dated 23.07.2001 in Original Ex. W-25.

25. Reply from the workman on dated 23. 07.2001 in Original Ex. W-26.

26. List of Documents of details on dated 18.08.2001 filed by the workman in conciliation Ex. W-27.

27. Disability Certificate of workman on dated 08,05.2002 -Photocopy Ex. W-28.

In Support of his case Management filed following documents as Follows :—

1. Certified copied of Attendance Register from 1.01.1999 to 31.08.1999. (Page 1 to 8).

2. Certified copies of Attendance Register from 01.01.2000 to 30.09.2000. (Page 9 to 16).

3. Copy of Certified standing orders for the employees of the D.M.S., Delhi (Page 17to29).

Workman/Claimant filed written submission in which he mentioned as follows:—

1. He was maith supply man Since 1.01.1999 & was paid Rs. 96/- per day. He is continuously working since 1.01.1999.

2. On 14.08.1999 he became injured during loading & unloading & his bone of left hand fractured.

3. That he remain on medical leave from 14.08.99 to 24.01.2000. Information of this was given to manager regular.

4. Managers have not paid pay to Workman/Claimant for a period of accident since 14.08.1999 to 24.1.2000. Nor paid any compensation for his fracture in left hand as compensation. He came again on duty on 25.01.2000 after producing fitness certificate.

5. After examine the workman Dr. of Ram Manohar Lohia New Delhi. On 25.01.2004 only permitted light work. Copy on which furnished to managers on which they became annoyed.

6. Mananger's made permanent to co-workers Sushil Kumar, Ajay Kumar, Rajender Kumar & Sunil Kumar. When workman Claimed equal pay to them and claim arrear then manager threatened him to expel him out.

7. Workman claimed appointment letter, ESI, Bonus, Annual Increment, PF and minimum wages etc. When workman claim aforesaid facilities then manager's inrevengeful sprit expel him out on 23.09.2000. Thus manager's violated the provisions of Sec. 25F, G, H Industrial Dispute Act. Because it is not necessary to prove that workman has completed 240 days of work. Because manager's has violated the retrenchment rule last come first go. In 1[2010] SLT 448 supreme court emphasized the aforesaid principles.

8. Workman filed his claim before assistant Labour Commissioner but there could not be any settlement. Due to which reference has been made to this Tribunal.

9. Workman filed claim Statement in this Tribunal against which management tiled their Written Statement wherein it is stated that workman has not completed work of 240 days. Against written statement workman filed rejoinder. On the basis of which following issues have been framed:—

   1. As for terms of reference.

   2. Relief.

10. In support of his case workman filed affidavit WW1/A & filed paper WW-1/1 to WW1/28. His examination in chief was recorded & he was cross-examined on 20.02.2006 by Manager's 'S first line "I was not given any appointment letter". And after that fourth Line It is correct that I was assigned duties/work as per the requirements of management and payment was made accordingly. It is incorrect to suggest that I was not required to move an application for leave as and when I wanted to be on leave. It is incorrect to suggest that I did not inform the management of the accident immediately. I did not get myself examined from the doctor of the management when I received the injuries. Vol. That you got myself medically treated from Ram Mahonar Lohia Hospital. I was admitted in the hospital through the management. I remain

admitted in the hospital about 20 days and I received treatment from the said hospital for five months and 15 days. I don't possess any other document except the fitness certificate filed in this case.

Second page of cross-examination eight line "It is correct that I was engaged on daily wages. It is incorrect to suggest that I have not completed 240 days worked days of work in any year including 1999-2000.

Kindly see the MW-1 cross examination of Management Witness.

"I do not dispute the medical certificates issued by RML Hospital, New Delhi to the workman and these are Exh. MW1 to Exh MWl/W-6. Though certain leave to the workman has been recommended by the hospital but as regards our office, he was merely a Badli worker and as such was not entitled to any leave merely on the strength of the certificates issued by the R.M.L Hospital. It is incorrect to suggest that workman Suraj Kumar was continuously working in our office from 1.1.1999 onwards. In fact, the number of days he has worked in our office after joining on 1.1.1999 are all reflected in my affidavit which may kindly be looked in to."

"It is not disputed that workman Suraj kumar met with an accident while working with the management. He gave the intimation of this accident quite late to us. It is incorrect to suggest that workman was gave intimation regarding the accident on the same day."

Second page fifth line" We never wrote any letter to the workman asking him to join any duty since he was a Badly worker and we never required his services. It is incorrect to suggest that the workman had worked for more than 240 days prior to this dis-engagement in September 2000."

"No show cause notice was given to the workman as it not required to be given. No enquiry was needed to be conducted in this case before telling the worker not to come to the office any more. It the medical leave is deemed to have been granted to the workman then he will complete 240 days before he was dis-engaged in September, 2000 in a calendar of 12 months preceeding the date of his continuance. It is wrong to suggest that I have deposed falsely and incorrectly. We had complied the order made by the workman compensation commissioner Karma Pura New Delhi and in execution of that order paid the workman a sum of Rs, 9468/-.

25B

Definition of continuous service, 2*[25B. Definition of continuous service. —For the purposes of this Chapter,

(1) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.

(2) Kindly see the certified standing order for the D.M.S. classification. The workers shall be classified as:—

1. Casual 2. Badli 3. Apprentice

Definiion of Badli worker:— Badli means a worker who is employed for the purpose of working in place of regular employees who are temporarily absent.

Provided that the badli worker who has actually worked for not less than 240 days I any period of 12 months shall be transferred to regular establishment governed by the fundamental and supplementary rules.

11. That the workman during his evidence on 17.12.2008 moved an application through which he prayed that managers be directed to produced the record in the Tribunal M/s. Automobile Association of upper India *Vs.* P.O.L.C.-2 & others 2006 LLR 581, Delhi High Court kindly *see* the Para No. 14 through which it is proved that managers knowingly has not produced record relating to employees. That workman/Claimant work with managers more than 240 days and managers has not granted medical leave which was demanded on Account of his accident. Although provisions of Sec. 25-B Industrial Dispute Act there is provision for medical leave. But managers ignored it which is wrong. If which is counted then workman attendance become more than 240 days. On the count workman is entitled for reinstatement with full back wages.

That workman since his termination is totally unemployed and managers could not proved that workman is not employed. Due to which workman entitled for reinstatement with full back pay.

On aforesaid ground workman/claimant prayed that award in favour of workman/claimant be passed that he be reinstatement with full back wages,

Management filed written submission in which he mentioned as follows:—

That the Suraj Kumar, was engaged as badly worker in the year 1999. That during the period Jan. 1999 to December 1999 *i.e.* during the 12 months he worked only for 112 days for which he was duly paid. From Jan. 2000 to September 2000 he worked for 99 days. The statement of engagement is exhibited as WW1/2 Mr. Suraj Kumar is not covered under the standing order under Rule 4 (iii) of the DMS employees, already placed on record.

That the ex-badli worker, Suraj Kumar met with an accident on 14.08.1999. But no intimation about the accident

was sent by him till 20.10.1999. He submitted the intimation about the accident after 66 days from the date of accident which was found unreasonable and with malafide intention. He was not entitled for any kind of leave as he was only a badly worker. That he gets payment on daily basis for the number of days he actually works as badly worker. That according to certified standing order Rule 10 the worker will be governed with the provisions of the factories act. That the grant of leave to a worker is at the discretion of the chairman. That the worker is required to apply for leave at least 7 days before the day from the day from which leave is to be commenced except in urgent or unforeseen circumstances which it may not be possible to do so. He submitted the intimation after 66 days from the date of alleged accident and that the delay of 66 was found unreasonable and was therefore not considered by the management.

It is submitted that the ex-badli worker Suraj Kumar applied for leave for the period from 14th August to 14th October for the first time on 20th October after a gap of 66 days but did not reported for duty. The daily worker submitted next leave application from 30th November, 1999 to 25th Jan., 2000 and finally he reported for duty only on 29th January, 2000. He remained absent from duty for 168 days from 14.08.1999 to 28.01.2000. It is submitted that as per standing orders which provides under Rule 10(C) that any worker remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to loose its lien on his appointment unless he returns within 8 days of the expiry of sanctioned leave and explain to the satisfaction of the authority granting leave, his inability to resume duties immediately of his leave and explain to the satisfaction of the authority granting leave, his inability to resume duties immediately of his leave. It further provides that in case the workmen looses his lien on his appointment he shall be kept on the badly list.

It is further submitted that the worker was not illegible for regularization under the Industrial Disputes Act, 1947 which provides under section 25(b) that a workmen shall in a continuous service 12 calendar months proceedings the date with reference to calendar of 240 days is to be made. It is submitted that the condition was not fulfilled.

It is further submitted in Sep. 2000 all Badli workers were dispensed with as there was no requirement of badli worker and on account of change in Government policy. It is further submitted that there is no vacancy of badly worker as at present.

It is submitted that the ex-worker Suraj Kumar was paid a sum of Rs. 9468/-as compensation on account of accident claim filed as per order dated 5th April, 2004.

It is submitted that the Hon'ble Apex Court in reported matter Jt 2005 (3) SC20 titles Secretary Karnataka State Road Corporation *Vs.* SG Kotturappa & Another held that the badli worker is nothing but a contractual employee and does not enjoy the status status of a Government Employee and his services are not protected by any provision of status and they do not hold a civil post. So long as a worker remains as badli worker. In view of the above settled law the termination of badly worker cannot be called as violation of mandatory provisions of the stature. It is further submitted that practice of employing badly worker has been dispensed since 30.09.2000 as per change in Government policy.

In an order reported matter titled Secretary State of Karnataka vs. Uma Devi 2006 (4) Scale 197 that the Hon'ble apex court held' merely because a employee or casual wage worker is continued beyond his term of appointment he would not be entitled to be absorbed in regular service or made permanent.

In an order reported matter titled Bank of India *Vs*. Tarun Kumar Biswan & Other 2007 (9) SCA page 443 the Apex Court held the scheme of badli worker is different are in order to become entitled to benefit of certified order a badli worker has to actually complete 240 days of attendence.

It is submitted that in the present matter the ex-worker has not completed 240 days and as such he is not entitled for transfer to regular establishment of the D.M.S.

In support of aforesaid contentions my Ld. A/R for the workman sited following rulings:-

1, HARJINDER SINGH VS. PUNJAB STATE WAREHOUSING CORPN. I(2010)SLT 448

In aforesaid ruling their Lordship of Hon'ble Supreme Court laid down following Principle:—

1. Industrial Dispute Act, 1947—Section 25 G-Retrenchment. Applicability of Section 25G-Workman not required to prove that he had worked for a period of 240 days during twelve calendar months preceding termination of his service- It is sufficient for him to plead and prove that while effecting retrenchment, employer violated rule of 'Last come first go' without any tangible reason.

2. He also filed copy of Judgment passed by their Lordship of Hon'ble Supreme Court in Civil appeal No. 6767 of 2013.

DEEPALI GUNDU SURWASE

VS.

KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA (D. ED.) AND ORS.

DECIDED ON 12.08.2013.

Wherein their Lordship of Hon'ble Supreme Court emphasized the relevant provisions of Service Law including provision of Sec-25 Industrial Dispute Act.

In the light of contention and counter contentions I perused the pleading and evidence of the parties on record as well as settled law of Hon'ble Supreme Court on the relevant points. Which show that it is admitted fact that workman was Badli worker but on daily rated wages.

Only one question of determination is needed in the instant case.

According to workman he performed continuous work for 240 days in preceding 12 months including the period in which he remained confined to bad due to injury caused to him in accident during his employment. While according to management period of 240 days work while was not completed by workman during preceding 12 months.

According to management workman willfully absented from duly for a certain period which cannot be counted in his duty period.

Perusal of evidence on record shows that management has paid Amount of compensation due to accident. In which workman became injured during duty hour.

It is relevant to mention here that definition of continuous service defined in Clause (i) to Explanation of sub-section (2) (b) of S. 25-B Industrial Dispute Act is as follows:-

For the purposes of clause (2), the number of days on which workman has actually worked under an employer shall include the days on which—

(i) He has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) , or under this Act or under any other law applicable to the industrial establishment;

(ii) He has been on leave with full wage, earned in the previous year;

(iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.

Which makes its crystal clear that management has intentionally brushed aside the period of ailment. So that workman may be deprived on the count of non-completion of continuous work of 240 days by workman in preceding 12 months. Which is illegal & unjustified on the part of management. Workman is found to have completed work of 240 days in a preceding 12 months. Due to which management has violated provisions of Sec-25-F of Industrial Dispute Act while retrenching the workman.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr *Vs.* Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr. AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S. 25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited *Vs.* Sushil Kumar (2008) 9 SCC 48c6, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus, Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated:-16/12/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एम सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 28/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/19/2011-आई आर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2011) of the Cent.Govt.Indus. Tribunul-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Lingaraj Area of MCL, and their workmen, received by the Central Government on 13/01/2014.

[No. L-22012/19/2011-IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

SHRI J. SRIVASTAVA,

Presiding Officer, C.G.I.T.-cum-Labour

Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 28/2011

Date of Passing Award—29th July, 2013

BETWEEN:

The General Manager, Lingaraj Area of MCL,

At./Po. Deulbera Colliery, Dist. Angul.

... lst Party-Management

(And)

The General Secretary, Talcher Coal

Mines Employees Union, At. Qrs. No. A/121,

PO. N.S. Nagar, Dist. Angul.

... 2nd Party-Union

APPEARANCES:

None. ... For the lst Party-Management

None. ... For the 2nd Party-Union

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Lingaraj Area of MCL and their workmen in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* its letter No. L-22012/19/2011-IR(CM-II), dated 11.05.2011 in respect of the following matter:—

"Whether the action of the management of Lingaraj Area of MCL in creating wage disparity between Shri P.C Sahoo and V.K. Upadhyay both JR DEO-Gr-D and not giving promotion to them as per the cadre scheme is appropriate and justified? To what relief the workmen are entitled to"?

2. The 2nd Party-Union espousing the cause of the workmen has filed statement of claim stating that both the workmen namely Shri Pravakar Sahoo and Shri Vijay Kumar Upadhaya are presently working as Junior Data Entry Operator (DEO) in the office of the General Manager, Lingaraj Area, At./PO. Deulabera Colliery in the District of Angul, Orissa, Shri Pravakar Sahoo was appointed in the MCL on 29.3.1996 as land oustee in Bharatpur O.C.P. and then transferred to Kalinga O.C.P. on 1.4.1996, Shri Vijay Kumar Upadhaya was appointed on 26.12.1996 on the death of his father and later transferred to Lingaraj Area and posted in Regional Store, Lingaraj Area. Shri Pravakar Sahoo and Shri Vijay Kumar Upadhyay were later selected on the post of E.D.P. (Tr.), Both of them worked as E.D.P. (Tr.) for one and half year and then their designation was changed to Junior Data Entry Operator (Tr.), Grade-E from 1.6.2004. Recently both of them have been promoted as Junior Data Entry Operator and joined the post on 30.3.2010 on protest. They have been working in the post of Junior Data Entry Operator (Tr.), Grade-E from 1.6.2004, but their basic pay has not been fixed properly on promotion. They were drawing more pay in their previous post, but their basic pay has been fixed at the initial pay of the new post. Both of them are eligible to get Grade "D"post in the same discipline after working in the job after one year and then they should get promotion as per the cadre scheme. In the E.D.P. cadre they should be retained for one year as trainee then they should get promotion to the next higher post and thereafter promotion after three years. Interestingly their pay which was reduced to the starting pay of the new post has been regularized in adopting the basic of NCWA-VIII with effect from 1.7.2006, but they were not paid arrear wages of differential pay. Again the Management did not consider their promotion as per cadre scheme and retained them in Grade-E post till now despite making repeated requests. This amounts to unfair labour practice. Therefore both the workmen should be regularized in the post they held on appointment as trainee after one year and their promotions should be allowed after consideration as per cadre scheme and their basic pay should be fixed at the corresponding scale of new post on placement.

3. The Ist Party-Management did appear in the case through its authorized representative, but did not file any written statement. As such the case was ordered to proceed exparte against the 1st Party-Management and the 2nd Party-Union was called upon to adduce evidence in support of its claim. But the 2nd Party-Union failed to file any oral evidence. It has filed photostat copies of some documents along with its statement of claim, but these documents have not been proved and exhibited through oral evidence.

3. As per the schedule of reference the dispute consists of two parts:—

(i) Whether the action of the Management of Lingaraj Area of MCL in creating wage disparity between Shri P.C. Sahoo and V.K. Upadhyay both Jr. DEO, Gr-D is appropriate and justified? and

(ii) Whether the action of the Management of Lingaraj Area of MCL by not giving promotion to them as per cadre scheme is appropriate and justified?

4. As regards the first part of the dispute the 2nd Party-Union has not raised any pleadings in its statement of claim. It has only alleged that the basic pay of both the workmen has not been protected and fixation has not been done properly. Their basic pay was fixed at the initial pay of the new post, while they were drawing more basic pay in the earlier post. It is very much clear from the averments made in Para-6 of the claim petition. Besides, no evidence on this point has been led by the 2nd Party-Union or the disputant workmen. Hence it cannot be said or held that the 1st Party-Management has done any discrimination or disparity in pay fixation of the two workmen on promotion,

5. On the second point of dispute the main grievance of the disputant workmen seems to have been that they were not given promotion in the post of Junior Data Entry Operator from due date as per cadre scheme. They were promoted to the post of Junior Data Entry Operator (trainee) Grade-E from the post of EDP (Trainee) on 1.6.2004 and after working for nearly six years they were given promotion to the post of Junior Data Entry Operator, Grade-D on 29.3.2010 while the cadre scheme stipulates two years experience as Junior Punch Verifier/Junior Data Entry Operator in Grade-II, It is not clear, nor the 2nd Party-Union or the disputant workmen have clarified as to why their promotion was delayed? No material or substantial evidence could come before the court due to non-appearance of the 1st Party-Management. Although the Management preferred to refrain itself from the proceedings of the case, but the principles of natural justice demand due consideration by the Management of its action in not promoting the disputant workmen as per cadre scheme. However in absence of any material to substantiate the case of the disputant workmen, no specific order can be passed in this regard. The 2nd Party-Union or the disputant workmen have not appeared in the witness box to depose the true facts of the case and bring out material before the court to justify the claim. Therefore the 2nd Party-Union or the disputant workmen cannot be given any relief.

6. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एम सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 28/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/168/1996-आई आर (सी-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947, the Central Government hereby publishes the Award (Ref. No. 28/2001) of the Cenl. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Ib Valley Area of MCL, and their workmen, received by the Central Government on 13/01/2014.

[No. L-22012/168/1996-IR (C-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

SHRI J. SRIVASTAVA,

Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 28/2001

Date of Passing Award—30th April, 2013

Between:

The Management of the General Manager,
Ib Valley Area, Mahanadi Coalfields Ltd.,
Po. Brajarajnagar, Dist. Jharsuguda.

... 1st Party-Management.

(And)

Their workmen represented through the
Joint Secretary, Brajarajnagar Coal Mines
Workers Union, At./Po. Lamtibahal,
Via Brajarajnagar, Dist. Jharsuguda.

... 2nd Party-Union.

APPEARANCES:

M/s. G.K. Satpathy, Advocate.	... For the 1st Party Management
M/s. D. Mahanta, Advocate.	... For the 2nd Party-Union

AWARD

The Government of India in the Ministry of Labour *vide* its Letter No. L-22012/168/96-lR(C-II) dated 5.6.1997 has referred an industrial dispute existing between the employers in relation to the management of Ib Valley Area, MCL and their workman in exercise of the powers conferred by clause (d) of sub-section (1) of sub-section 2(A) of Section 10 of the Industrial Disputes Act in respect of the following matter.

> "Whether the action of the Management of Ib Valley Area of Mahanadi Coalfields Lid. in terminating the services of S/Sh. Gokul Satpathy, Safet Kansarali, Jay Gopal Podha, Raju Kisan, Sundar Pradhan and Prafulla Kumar Besan is legal and justified? If not, to what relief are the workmen entitled and from which date?"

2. The 2nd Party-Union filed statement of claim and stated that the disputant workmen named above were engaged by the Management as labourers in Regional Stores, Belpahar during July, 1993 and some of them were also engaged for some time as peons, but the exact nature of their duties was supervising the loading and unloading operation, checking of packets and shelfing them in the stores etc. All the above workmen continued their work/ duty up-to 30-10.1995 without any break. But suddenly they were refused work from 31.10.1995 without any reason. This act of the Management is illegal, arbitrary and amounts to unfair labour practice. The Management had direct supervision and control over these workmen. They were being paid weekly wages directly by the Management. The payment vouchers were made by the MCL, Ib Valley Area in the name of one workman and the amounts sanctioned was distributed equally among all the workmen. Therefore there was master and servant relationship between the Management and these workmen, These workmen were not engaged by the contractor in the Regional Stores. The sudden refusal of work to these workmen by the Management amounts to retrenchment which is in violation of Section 25-F of the Industrial Disputes Act Before refusal of work to these workmen the Management has neither given one months, notice in writing indicating the reasons for retrenchment nor has paid compensation as required. All the six workmen had rendered nearly two years four months service which shows that there is need for regular post and the Management should have taken immediate steps to regularize them. The Union represented to the General Manager, MCL, Ib Valley area to regularize these six workmen *vide* letter dated 31.10.1995, but their claim was refused. Then the grievance of the workmen was raised by the Union before the Asst. Labour Commissioner (Central), Rourkela who inspected the area and found that the six workmen were engaged against the job which is permanent and perennial in nature. But the Management instead of regularizing them, has refused work to them. Hence it has been prayed that the Management be directed to take them bact and regularize them, in their jobs and pay them differential wages of Category-I from the date of their engagement.

3. The 1st Party-Management in its written statement has stated that the disputant workmen were contract workers being paid on the basis of the approved rate by the competent authority for each item of work. Their wages of each day was collected periodically by one of them on behalf of all the workmen depending upon the quantum of work done by them collectively. The payment so received was distributed by themselves as per their respective contribution to the work. There was no privity of contract between the 1st Party-Management and the disputant workmen. They were never assigned any duty of supervising the loading and unloading operation or checking of packets as has been alleged. It is also false to allege that some of them were engaged as peons and they were continuously engaged without any break up-to 30.10.1995. The Management had engaged these workmen on contract basis as the nature of job involved was of casual nature. Since there was no need of labourers and peons after 31.10.1995 the allegations regarding approach of these workmen to the Depot Officer and their engagement in the Regional Stores are false. The job of stacking, loading and unloading and checking of packets etc. relates to the valuable articles of the 1st Party-Management. Therefore the same was entrusted to private agencies like the disputant workmen due to exigencies. A record of the same had to be maintained for reference at any time later in case of any shortage, breakage etc. Some of the general mazdoors of the company were also deputed along with these six workmen whose names were recorded in such documents alleged to be the attendance register. Such endorsements by putting signature were also necessary to certify the quantum of work done by the workers against which payment can be passed by the concerned department. Therefore these documents cannot be laken to show that the workers so engaged were under direct supervision and control of the Management. The payment vouchers filed by the 2nd Party-Union do not disclose the relationship of master and servant between the workers and the Management. The job performed by these workmen cannot be treated as the job of perennial nature as the consignments are not expected everyday from outside. These workmen were engaged purely on rate contract basis to do the casual job on exigencies as and when necessary. Therefore their claim for regularization is unfounded and the reference may be answered in favour of the Management.

4. The 2nd Party-Union in its rejoinder has stated that the disputant workmen are neither casual nor contract labourers. The Management has not alleged the engagement of any contractor. The Management has been diverting the regular employees for getting the work done

earlier performed by these workmen. Therefore the work is regular and perennial in nature and the termination of the disputant workmen was unwarranted and illegal.

5. On the pleadings of the parties following issues were framed.

ISSUES

1. Whether the action of the management in terminating the services of Sri Gokul Satpathy, Safet Kansarali, Jay Gopal Podha, Raju Kisan, Sundar Pradhan & Prafulla Kumar Besan is legal and justified?

2. If not, to what relief are the workmen entitled & from which date?

6. The 1st party-Management has adduced the evidence of two witnesses namely Shri Santosh Kumar Mohanty as M.W.-1 and Shri Hrudananda Majhi as M.W.-2 and relied on four documents marked as Ext.-A to Ext.-D.

7. The 2nd Party-Union has examined two witnesses namely Shri Arun Chandra Hota as W.W.-1 and Shri Prafulla Kumar Besan as W.W.-2 and relied upon three documents marked as Ext.-1, 2 and 2/1.

FINDINGS

ISSUE NO. 1

8. As per allegation of the workmen they were engaged by the 1st Party- Management as labourers in the Regional Store, Belpahar and worked there from July, 1993 to October, 1995 without any break, whereas the stand of the 1st Party-Management is that the disputant workmen were contract workers being paid on the basis of the approved rate for each item of work. Their wages for each day was collected periodically by one of them on behalf of all the workmen which depended on the quantum of work done by them collectively and distributed by themselves as per their respective contributions to the work.

9. From the evidence adduced by the parties the stand taken by the Management proves to be true and substantiated by the statements given on oath by the witnesses of both the sides. There is no dispute that the workmen worked in the Regional Stores, Belpahar from July, 1993 to October, 1995 as casual labourers for loading and unloading operation, checking of packets, and shelfing them in stores. W.W.-1 Shri Arun Chandra Hota could not tell as to who engaged the 2nd Party-workmen and whether they were working on rate contract basis? W.W.-2 Shri Prafulla Kumar Besan has stated in his evidence that a khata was supplied to each labourer in which the officer was daily recording as to what work each of the labourers had done and after verifying each khata payment was being made. Ext-1 is the attendance register with allotment of work and Ext-2 series is the payment/adjustment vouchers. The money paid by the cashier was being distributed amongst the six workers and two other outsider labourers. The officer was giving instructions daily to each of the labourers in their khata as to the work to be done by each of them and that apart they were not giving their attendance any-where. He has further stated that on receiving money from the office these labourers were deciding among themselves as to who will get how-much money depending upon the work done by each of them. All these assertions support the case of the 1st party-Management. MW.-1 Santosh Kumar Mohanty has virtually said the same thing while stating that the workmen were working on the basis of rate contract. According to him they were working collectively and one of them was receiving the payment and distributing it amongst the labourers. Ext-1 is not the attendance register, it is a note prepared by him showing the persons worked on a particular date being supervised by him. This register was maintained to prepare bills for making payment. The names of the disputant workmen do not find place in Ext.-A, B & C which are the attendance register, Ext.-2 was prepared after receipt of the approval of the Dy. C.M.M. on the bills submitted by him. This witness has earlier stated that the services of the outside labourers are taken when the work load becomes more. The workmen concerned in this case were engaged when there was need of work. MW.-2, Shri Hrudananda Majhi has also stated in his evidence that "at the time of need basis we used to engage outsiders on rate contract basis". He further stated that "we never used to maintain the attendance of casual labourers". These casual labourers according to him were not working everyday. They worked on the dates when the materials were sent through trucks.

10. From the perusal of Ext-1 and 2 filed on behalf of the 2nd Party-workmen it cannot be said that these two documents prove their regular engagement by the 1st Party-Management. Ext.-1 cannot be named as attendance register. It only shows the dates and names of the workmen who worked on those particular dates and did particular work. Copies of the payment vouchers also do not show their continuous employment. This goes to reflect that the 2nd Party-workmen had not worked continuously for 240 days during a period of 12 calendar months preceding the date of their disengagement. The work performed by these workmen is permanent or perennial in nature is not of any importance as they were engaged on contract basis. Payment of their work was to be made on the quantum of work they had performed. Therefore they had not acquired any right to be regularized or to continue in service when there is no sufficient work for them with the Management.

11. Under these circumstances the action of the Management in terminating the services of S/Shri Gokul Satpathy, Safet Kansarali, Jay Gopal Podha, Raju Kisan, Sundar Pradhan and Prafulla Kumar Besan is perfectly legal and justified and no right lo get any relief accrue to them. This issue is decided against the 2nd Party-Workmen and in favour of the 1st Party-Management.

ISSUE NO. 2

12. From what has been stated in Issue No. 1 above the workmen are not entitled to anv relief whatsoever.

13. Reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी आई पी ई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/249/2005-आई आर (सी एम-II)]

बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 13th January, 2014

S.O. 363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 17/2006 of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the industrial dispute between the management of Central Institute of Plastics Engg. & Technology, and their workmen, received by the Central Government on 13/01/2014.

[No. L-42012/249/2005-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri J. Srivastava,

Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar

INDUSTRIAL DISPUTE CASE NO. 17/2006

Date of Passing Award—8th August, 2013

Between:

1. The Director General, Central Institute of Plastics Enggr & Technology, Corporate Office, Guindy, Tamilnadu - 600 032.
2. The Deputy Director & Head, Central Institute of Plastics Engg. & Technology, B/25. CHI Complex, Bhubaneswar (Orissa)—751 024

... 1st Party-Managements

(And)

Shri Sridhar Naik,
S/o. Late Bholi Naik, At./Po. Patia,
Ps. Chandrasekharpur, Bhubaneswar
(Orissa)-751 031

... 2nd Party-Workman

Appearances:

Shri K.S. Sodhi, Manager (PAF)	... For the 1st Party-Managements
Shri Sridhar Naik	For Himself the 2nd Party Workman

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute *vide* its letter No. L-42012/249/2005 - 1R (CM-II) dated 17.8.2006 existing between the employers in relation to the management of Central Institute of Plastics Engg. & Technology and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 in respect of the following matter:—

> "Whether the action of the management of Central Institute of Plastics Engineering and Technology in terminating the services of Sri Sridhar Nayak *w.e.f.* 1.7.2003 is legal and justified? If not, to what relief is the workman entitled?"

2. The 2nd Party-workman in his statement of claim has averred that he was engaged as a casual worker under the 1st Party-Management No. 1 and was assigned duties in the boys hostel. Later he was engaged in Library and Training Department. While working as such his services were approved by the then Project Head with effect from 1.3.1992. He had been discharging his duties very sincerely, efficiently and continuously having no adverse remarks against him. His initial monthly pay was raised in the year 1997 from Rs. 500 to Rs. 2025 and then to Rs. 3050 with effect from 16.8.2001. His name was cited at Sl. No. 5 in the list showing details of casual/temporary employees. He rendered continuous service from 1.3.1992 to 30.6.2003 without any break. From 1.7.2003 Shri Ajit Kumar Pattnaik, Assistant of the 1st Party-Management No. 1 refused employment to him verbally under the orders of the Chief Manager, (Project) Dr. S.K. Nayak. His several requests for giving employment were turned down and the security guards of the Management did not allow him to enter inside the campus. The 1st Party-Management has refused employment to him without any reason and without compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The Ist Party-Management has engaged Mr. Manoj Kumar Pattnaik as a contractor without obtaining any license under the Contract Labour (R & A)

Act, 1970, who in turn, has deployed personnel for discharging the duties of the 2nd Party-workman. The 1st Party-Management forced him to work under the contractor after submission of resignation, but the 2nd Party-workman refused to work under the contractor. He and his four senior co-workers were drawing salary directly from the 1st Party-Management by signing the vouchers. The 1st Party-Management has issued four cheques of Syndicate Bank, Bhubaneswar in the name of the 2nd Party-workman towards payment of arrear wages. Hence the 2nd Party-workman be reinstated in service with full back wages.

3. The 1st Party-Management has filed its written statement and alleged that the Central Institute of Plastics Engineering and Technology is a society registered under the Societies Registration Act, 1860 for training highly skilled personel in Plastics Processing, Plastics testing design and also to train tool room, I.T.I etc. It is essentially an educational institution. It is not engaged in any commercial activities. As such it is not an industry under the Industrial Disputes Act, 1947 and accordmgly this Court has no jurisdiction to entertain the case. The 2nd party-workman was engaged from November, 1994 to July, 1995 through House Keeping/Hotel Kitchen Contractor Shri Bata Krishna Sahoo, from August, 1995 to September, 1996 through the hostel kitchen contractor Shri B.C. Das and from October, 1996 to November, 1997 through the hostel kitchen contractor Shri Batakrishna Sahu. From July, 1997 onwards the 2nd Party-workman was engaged by the hostel mess committee for hoslel. The said committee was independently run by the hostel students. The 2nd Party-workman was receiving wages from the hostel mess committee through the institute. Earlier to it he was also engaged from 1.3.1992 through the contractor Shri Sridhar Naik for House Keeping works. The 2nd Party-workman worked till the month of July, 2003 and received the payment, but he did not turn up after July, 2003. In the month of June, 2004 he was engaged for gardening work on his personal request and received payment till August, 2004 for the work done by him. He left the job on his own choice. He has never worked continuously for 240 days in a year. He was never appointed the CIPET against any sanctioned permanent or regular post or vacancy. For the increasing house keeping job the 1st Party-Management has for engaged M/s. Manoj Enterprises to carry out the day to day house keeping in the hotel and office premises. The 2nd Party-workman was engaged by the respective contractors and mess committee as per their requirement while four seniors named by the 2nd Party-workman have been working in CIPET as casual/contract employees. The 2nd Party-workman was neither appointed against any regular sanctioned/vacant post by CIPET nor he has any vested right for his regularization in CIPET. Hence he is not entitled to be reinstated. The question of victimization does not arise since the 2nd Party-workman was neither appointed not disengaged by the CIPET. The provisions of Section 25 of the Industrial Disputes Act are not attracted in this case. The 2nd Party-workman has also filed W.P. No. 4600/2003 for regularination of his service in Hon'ble High Court of Orissa which is still pending. Hence he cannot be allowed to take shelter of two forums simultaneously for the same relief.

4. On the pleadings of the parties, following issues were framed:—

ISSUES

1. Whether the reference is maintainable?
2. Whether the workman was engaged by the Management of Central Institute of Plastics Engineering & Technology?
3. Whether the Management had ever refused employment to the workman with effect from 1.7,2003 and if so, whether the action of the management is justified and legal?
4. If, not to what relief the workman is entitled?

5. The 2nd Party-workman Shri Sridhar Nayak son of Late Bholi Naik has examined himself as W.W.-1 in evidence and relied upon fifteen documents marked as Ext.-1 to 15. On the other hand the 1st Party-Management has examined Shri Sridhar Naik son of Akura Naik as M.W.-1 and relied on several documents marked as ext.-A to S.

FINDINGS

ISSUE NO. 1

6. Although the 1st Party-Management has stated that its establishment being an educational institution not engaged in any commercial activities does not come under the definition of "Industry" and therefore the reference is not maintainable in this Tribunal/Court, yet it has not seriously contested the issue and seems to have given up the question of maintainability and jurisdiction of the court. It has filed Ext.-F, photostat copy of judgement of the Hon'ble High Court of Madras given in Writ Petition No. 863/1984 wherein it was held that the Management of Central Institute of Plastic Engineering and Tools, Madras is exempt under section 32(v) (b) and (c) of the Payment of Bonus Act. This judgement is no helpful in the present context as the question involved herein is the applicability of the Industrial Disputes Act, 1947, The 1st Party-Management seems to have submitted to the jurisdiction of the Central Government Industrial Tribunal-cum-Labour Court for adjudication of industrial disputes as it has relied on the judgement of the Hon'ble High Court of Punjab and Haryana at Chandigarh given in Civil Writ Petition No. 7344 of 2007 and judgement of I.D, Case No. 97/1995 given by the Labour Court, Bhubaneswar relating to the 1st Party-Management. The photostat copies of these two judgements have been filed along with Ihe written note of

argument by the 1st Party-Management. In these two cases applicability of the Industrial Disputes Act has not been challenged by the 1st Party-Management. In my view also this Tribunal-cum-Labour Court has jurisdiction to adjudicate upon the industrial dispute between the 1st Party-Management and its employees being an industrial dispute as the lsl Party-Management is a State-run establishment and the present dispute relates to public employment. This issue is accordingly decided against the 1st Party-Management and it is held that the reference is maintainable in this Tribunal/Labour Court.

ISSUE NO. 2

7. According to the 2nd Party-workman he was engaged by the 1st Party-Management No. 1 with effect from 1.3.1992 and he worked till 30.6.2003 without any break. On the contrary the 1st Party-Management has alleged that the 2nd Party-workman had worked from 1.3.1992 till July, 2003 under different contractors for different kind of work. He was receiving wages from the contractors through the Institute. But the 1st Party-Management has failed to prove by any cogent and reliable evidence that the 2nd party-workman was engaged by the contractors for different spell of time. It has examined one of the contractors named Shri Sridhar Naik as M.W.-l, who has stated in his evidence that the 2nd party-workman has worked under him for one year and disbursed his wages brought from the Management. He got appointment in regular post under the 1st Party-Management in the year 1994. Thereafter he left the contract and the 2nd Party-workman was doing various miscellaneous works under the Management. He has further stated that the 2nd Party-workman was working under the two contractors, namely Shri Batakrishna Sahu and Shri B.C. Das and getting his wages as usual from the office of the Management and the hostel. In his cross-examination he has candidly admitted that "I cannot say whether the workman was working with the contractor, but I can say the workman was working directly with the Management and receiving wages through voucher. The 1st Party-Management has filed four numbers of photostat copies of contract agreement executed between the contractor and the 1st Party-Management, but they do not indicate that the 2nd Party-workman was engaged by these contractors.

8. The 2nd Party-workman Shri Sridhar Nayak son of late Shri Bholi Nayak has stated in his evidence that he was engaged by the Management initially in the year 1992 as a sweeper and he continued to work till June, 2003 in different fields of work. He has also stated in his cross examination that he was engaged by Shri Sridhar Nayak, Contractor during the absence of Shri Bai Nayak and for that period Shri Sridhar Nayak, Contractor used to get his remuneration from the Management and give it to him. He has also admitted that he was sent to the hostel to assist Shri Batakrishna Sahoo who was working as a cook in the hostel in the year 1994. 50% of his wages and 50% of wages of other workers was borne by the hostel committee and the rest 50% was borne by the Management. From his statement read as a whole, it cannot be concluded that he was engaged by the contractor and shifted his employment from one contractor to another with the change of contractor. He has also filed several documents to prove that he was working as a casual employee under the 1st Party-Management. Exts-1 to 3 show that the 1st Party-Management has recommended his name along with four other casual workers for regularization to its Head Office. He was also given bonus along with other employees in the year 1996-97 and 1998-99 as is reflected from Ext.-4 and 9. Delails of casual staff are given in Ext.-6 and 13. Although this list has been denied by the 1st Party-Management, but no one from the side of the lsl Party-Management has come to state this thing on oath The 2nd Party-workman was has also filed copies of vouchers. Ext.-5, 8 and 14 to show the payment of wages and bonus by the Management. The lsl Party-Management has also filed photostat copies of several vouchers and one money receipt towards payment of wages and other dues to the 2nd Party-workman, All these documents go to prove that the 2nd Party-workman was engaged by the Management of CIPET itself and not by the contractors. This issue is accordingly decided in the affirmative and in favour of the 2nd Parly-workman.

ISSUE NO. 3

9. The stand of the 2nd Party-workman is that he was refused employment on 1.7.2003 by Shri Ajit Kumar Pattnaik, Assistant under the direction of the 1st Parly-Management No. 1, but this stand of the 2nd Party-workman proves to be false as he himself has admitted in his cross examination that 1.7.2003 was a holiday on account of Rath Yatra. He had worked in the month of July, 2003 and was also paid his wages amounting to Rs. 3050. He also granted receipt of that payment which has been filed as Ext.-A by the 1st Party-Management. Further he has admitted that "it is a fact that I worked in the month of June, July and August, 2004 in the office of the Management and I have also received salary for those months". However he has voluntarily stated afterwards that the Management having refused employment to him for about nine months called him after receipt of an Advocate notice and engaged him in June, July and August, 2004. It means that he was not engaged after July, 2003 for about ten months and then again engaged in June, July and August, 2004. The Management's version is that the 2nd Party-workman did not turn up for work after July, 2003. Thereafter he was engaged on his personal request for gardening work in June, 2004 and worked till August, 2004. He had left the job on his own choice. There is no evidence on record on what terms and conditions he was engaged. Likewise there is no reliable and truthful evidence on record regarding disengagement of the workman by the 1st Party-

Management from 01.07.2003 whereas the 2nd Party-workman has averred in the pleadings that he was refused employment by the 1st Party-Management on 1.7.2003. In his evidence he denies refusal of employment from 1.7.2003, This stand of the workman cannot be believed. There is no further allegation by the 2nd party-workman that the 1st Party-Management has refused employment to him from August, 2003. Hence the case of the 2nd Party-workman regarding refusal of employment to him by the 1st Party-Management does not stand true and it might be true that he has himself left the job. Issue No. 3 is decided against the 2nd Party-workman as to the point of refusal of employment to the workman by the 1st Party-Management *w.e.f.* 01.07.2003. Since the 1st Party-Management has not refused employment to the 2nd Party-workman no question of legality or illegality of the action of the Management arises in this regard.

ISSUE NO. 4

10. As the 2nd Party-workman has failed to prove the refusal of employment by the Ist Party-Management and also to prove 240 days continuous service during a period of 12 calender months preceding the date of his alleged disengagement, he does not appear to be entitled to any relief.

11. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 364.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर बीएसएनएल, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 31/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 10-01-2014 को प्राप्त हुआ था।

[सं॰ एल-40012/108/2005-आईआर(डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 31/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, BSNL, Hyderabad and their workman, which was received by the Central Government on 10/01/2014.

[No. L-40012/108 /2005-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Smt M. Vijaya Lakshmi,

Presiding Officer

Dated the 21st day of May, 2013

INDUSTRIAL DISPUTE No. 31/2006

Between :

Smt. Y. Padma,
C/o L. Vijaya Kumar,
H.No. 5-6-9, Laxmidevipeta,
Anakapalle (PO).
Visakhapatnam. ....Petitioner

AND

The General Manager, BSNL,
Telecom, Dwarakanagar,
Visakhapatnam. ....Respondent

APPEARANCES:

For the Petitioner : M/s. K. Rama Reddy & Y. Ranjit Reddy, Advocates

For the Respondent : Sri M.C. Jacob, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/108/2005-IR(DU) dated 24/5/2006 referred the following dispute under section 10(l)(d) of the l.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Limited and their workwoman. The term of reference is as under:

SCHEDULE

"Whether the action of the Management of M/s. Bharat Sanchar Nigam Limited, represented by General Manager, Telecom District, Visakhapatnam in terminating the services of Smt. Y. Padma, Ex-Part Time Scavenger/Casual Labour, *w.e.f.* 8.10.2002 is legal and justified? If not, to what relief she is entitled to?"

The reference is numbered in this Tribunal as ID No. 31/2006 and notices were issued to the parties.

2. Petitioner filed her claim statement with the averments in brief as follows:

Petitioner worked as part time scavenger in DTO. Anakapalli from July, 1997 to 7.10.2002 at the rate of 2 hours per day continuously. She was removed from service on 8.10.2002 by an oral order. She was not served with any notice of termination and the procedure for termination was not followed. Thus, the said termination is illegal,

arbitrary and in violation of Scc.25 F of Industrial Disputes Act, 1947. Several persons who were juniors to the petitioner and employed as casual labourers were regularized/ absorbed into the service of the respondent organization. Petitioner made a representation dated 16.7.2004 to the respondent marking copy of it to the Asst. Commissioner of Labour (Central), Visakhapatnam requesting for her absorption in respondent organization considering her temporary service from July, 1997 to 7.10.2002, since, her co-workers have been absorbed following the direction of the office of CGM, Telecom, A.P.Circle, Hyderabad, *vide* letter No. TA/STB/20-2/CO respondent/PTS/2000 dt 26.4.2001/ 1.5.2001. But she received copy of letter addressed to the Assistant Labour Commissioner(C), Visakhapatnam 20.8.2005 whereunder, it is stated that petitioner was never appointed as part time scavenger, that her services were utililzed for scavenging works for short duration, only on contract basis but not against any sanctioned post and that payments were made to her on temporary vouchers but not on regular establishment bills. Her representation, thus was rejected. The efforts made by the ALC© for conciliation were in vain. Petitioner belongs to a poor SC community and a divorcee having one dependent daughter. Having no alternate employment, due to illegal termination from service petitioner and her daughter are starving. Hence, an award is to be passed directing the respondent management to reinstate the petitioner into service with continuity of service with full back wages and all attendant benefits from 1.8.2002.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner was engaged as a scavenger for short duration on contract basis in the respondent industry. Payments were made on temporary vouchers. The services of the petitioner were disengaged after the contract period. Her contention that she was appointed as part time scavenger and that her services were terminated are all incorrect. She was never appointed and thus, termination of her services does not arise. She never put in more than 240 days of the work with the respondent industry. Sec.25 F of Industrial Disputes Act. 1947 is not applicable to her case. Her contention that her juniors were employed and their services were regularised are all incorrect. In view of these divergent views of the petitioner and respondent only, no conciliation could be effected. Petition is liable to be dismissed.

4. To substantiate the contentions of the petitioner she examined herself as WW1 and through her Ex.Wl to W12 were marked. On behalf of the management MWI Sri P. Krishna Rao was examined. No documentary evidence is adduced for the management.

5. Heard the arguments of either party. Written arguments were also filed by the respondent and the same were received.

6. **The points that arise for determination are:—**

(I) Whether the petitioner has worked either as a part time scavenger or as scavenger on contract basis with the respondent industry?

(II) Whether the termination of the services of the petitioner *w.e.f.* 8.10.2002 is illegal and justified?

(III) To what relief the petitioner is entitled?

7. **Point (I):**

As can be gathered from the material on record it is an undisputed fact that petitioner has worked as scavenger with the respondent industry. It is her contention that she worked so from July, 1997 to 7.10.2002 at the rate of 2 hours per day, continuously.

8. Whereas it is contention of the respondent that she worked as scavenger but only on contract basis and that her services were disengaged after the contract period. But, the fact remains that respondent has not come forward with the details of the alleged contract like, tenns of the contract, duration of the contract, etc.. He vaguely claimed that the services of the petitioner were taken on contract basis. Thus, the same can nol be accepted. Even, the senior section supervisor of the respondent organization who deposed as MW1 did not state anything about the terms and duration of the alleged contract between the petitioner and the respondent.

9. Whereas petitioner has categorically stated that she worked as part time scavenger continuously from July. 1997 to 7.10.2002 *i.e.* the date on which her services said to have been terminated by the respondent. To substantiate this contention she is relying upon Ex.W9 which is evidently issued by the office of STM(Q)I/C, T,O, Anakapally. This is the statement showing the number of hours of work performed by the petitioner as part time scavenger. As can be seen from this document from July, 1997 to 7.10.2002 petitioner has attended to the work almost regularly, and at the rate of 2 hours per day. In view of this contents of this document, which show that she worked at the rate of 2 hours per day only, her oral contention as WWI that she put in more working hours than 2 hours per day, can not be accepted.

10. Further more she being an illiterate woman petitioner's admission, while she was under cross examination as WWI, that she worked on contract basis also need not be considered. Further more, the entire evidence of the witness is to be taken into consideration to cull out her contentions. Though, she said that from July, 1997 to November. 2002 she worked on contract basis, immediately (thereafter she denied the suggestions put to her that she worked with the respondent whenever work was available only. She asserted that she put in 240 days of work with the respondent. While considering ihe suggestion given to WW1 regarding contract between the

parties, one another suggestion put to the petitioner while she was under cross examination as WW1 that she worked for 8 hours per day is also to be considered. She admitted the same when it was put to her for the respondent. But, the documentary evidence, is to the effect that she worked only for 2 hours per day. The documentary evidence will prevail over the oral evidence and thus, it alone can he considered, when such conflicting documentary and oral evidence come up for consideration.

11. As already discussed above, Respondent failed to establish that there was a contract between the petitioner and the respondent and petitioner worked as per that contract and that her services were terminated on expiry of the any such contract period. Whereas the oral evidence adduced on record, is considered together with the contents of the Ex. W9, what one can reasonably understand is that petitioner worked as part time scavenger with the respondent industry and received payment from them against vouchers. She put in 2 hours work per day only. She worked so for considerable period that is from July. 1997 and upto 7.10,2002. Thus, it can reasonably be concluded that she continuously worked for the respondent as part time scavenger, all during this considerable period. In view of the fore gone discussion, it can safely he concluded . that petitioner has worked as part time scavenger, with the respondent from July, 1997 to 7.10.2002 putting 2 hours work per day and that respondent failed to establish that she worked as scavenger on contract basis.

This point is answered accordingly.

12. **Point No.(II):** In view of the finding given in Point No.(l) it is very much clear that petitioner has been working as part time scavenger with the respondent industry from July, 1997 onwards and until the date of her termination from service orally *ie* upto 7.10.2002. She put in 2 hours work per day only as can be seen from Ex.W9.

13. Ex.W10 is the circular issued by the CGM: BNL, telecom, A.P.Circle, Hyderabad dt.26.4.2001/1.5.2001, whereunder guidelines for regularizing services of part time casual labourers and Ayahs are given. As can be seen from these guidelines, all part time casual labourers who are working 4 or more hours per day and converted into full time casual labours were to be given preference first and later all part time casual labourers who are working less than 4 per day and were converted into full time casual labourers are to be preferred for regularization. Later the aayahs and supervisors were to be considered. Thus, it is clear that the part time casual labourers, who were putting in the work for less than 4 hours per day were also to be converted into full time casual labouers and later they were to be considered for regularization. This circular was issued while the petitioner was still working for the respondent industry. Evidently, respondent failed to consider the petitioner for conversion into full time casual labourers and thereafter whenever vacancy arises for regularization, though Ex.W10 circular warrants the same. Instead, to wriggle out of the said responsibility, respondent has chosen to claim before this tribunal that the petitioner worked as scavenger for the respondent on some contract basis without giving any details of any such alleged contract. It amounts to denial of the rights accrued to the petitioner, by virtue of Ex.W10 circular, which is not permissible.

14. It is the contention of the petitioner that while terminating her services, she was not served with any notice and the procedure contemplated under Sec.25 F of the Industrial Disputes Act, 1947 was not at all followed. For this, the answer of the respondent is in two fold. One is that petitioner has been working on contract basis which is not acceptable for the reasons explained supra. The second contention is that petitioner has not put in 240 working days in any calendar year, just preceded the date of termination of her services. Petitioner is denying the truth of this contention. As already discussed above, Ex.W9 is giving details of the work performed by the petitioner for the respondent. When the same is considered, one can clearly see that during the year 2001 petitioner has put in more than 300 working days with the respondent. Thus, the contention of the respondent in this regard also is not acceptable.

15. Therefore, the contention of the petitioner that though it is obligatory, on the part of the respondent to comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, he failed to do so while terminating the services of the petitioner. Therefore, it can safely be held that termination of the services of the petitioner as part time scavenger/Casual labourer *w.e.f.* 8.10.2002, on the part of the respondent, is neither legal nor justified. This point is answered accordingly.

16. In the result, petition is allowed. Petitioner shall be reinstated into service as part time scavenger, by the respondent industry, forth with. Respondent shall consider her for conversion as full time casual labourer if vacancy is available/whenever vacancy arises, considering her seniority, as it stands by the date of termination of her services. *i.e.* 7.10.2002. Further, respondent shall pay forthwith Rs. 10000/- (Ten thousand rupees only) towards compensation for the hardship to which petitioner has heen put to, all these years from the date of her illegal termination from services.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Y. Padma	MW1: Sri P. Krishna Rao

Documents marked for the Petitioner

Ex.Wl: Copy of representation of petitioner dt 16.7. 2004

Ex.W2: Copy of letter of ALC(C), Visakhapatnam to respondent dt. 1 3.8.2004

Ex.W3: Copy of the reply by respondent to ALC(C), Visakhapatnam

Cx.W4: Copy of conciliation of ALC(C)? Visakhapatnam dt 13.7.2005

Ex.W5: Copy of Conciliation notice dated 28.7.2005

Ex.W6: Copy of Minutes of conciliation proceedings dt.29,7.2005

Ex.W7: Copy of Failure report of ALC(C), to Government of India dt.26.9.2005

Ex.W8: Copy of reference of dispute by Government of India dt.24.5,2006

Ex.W9: Copy of statement showing the No. of days of working by petitioner

Ex.W10: Copy of circular of CGM, BSNL, dt.26.4.2001/ 1.5.2001

Ex.Wll: Copy of circular of Govt. of India, Dept of Telecom Services, New Delhi dt. 25.8.2000

Ex. W12: Copy of caste certificate of the petitioner dt.31.7.2003

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 365.—औद्योगिक विवाद अधिनियम 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर हैवी वाटर प्लांट (मनुगुरु) खम्मम के प्रबंधतंत्र के संबंघ नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 22/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/86/2010-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 365.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 22/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Chief General Manager, Heavy Water Plant (Manuguru), Khammam and their workman which was received by the Central Government on 10.01.2014.

[No. L-42011/86/2010-IR(DU)]
P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of August, 2013

Industrial Dispute No. 22/2011

Between:

Sri Syed Khasim Hussain,
(Rep. of workman)
Ex. Scientific Asstt. 'D',
H. No. 11-2-71, Sree Nagar Colony,
New Palvoncha (P.O.)-507115,
Khamman District, ...Petitioner

AND

The Chief General Manager,
M/s. Heavy Water Plant (Manuguru),
Aswapuram-507116,
Khammam District. ....Respondent

Appearances :

For the Petitioner : Sri M.V.L. Narasaiah, Advocate

For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No. L-42011/86/2010-IR(DU) dated 23.5.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Heavy Water Plant and their workmen. The reference is,

SCHEDULE

"Whether the demand of Shri T. Damodarachary and 32 others (List enclosed), Contract Labourer employed by the H.W.P.(M) SC, BC and other Land Loosers Contract Labour Cooperative Society Ltd., Aswapuram for Payment of Bonus as per provisions of the Payment of Bonus Act, 1965, is legal and justified? What relief the workers are entitled to?"

The reference is numbered in this Trinunal as I.D. No. 22/2011 and notices were issued to the parties.

2. Case stands posted for filing claim statement and documents by the Petitioner union.

3. Petitioner union or their counsel called absent and there is no representation. Claim statement and documents are not filed inspite of giving fair opportunity. Petitioner union is not taking interest in the proceedings though the matter is pending since the year 2011. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	**Witnesses examined for the Respondent**
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 366.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर इन चार्ज सालारजंग म्यूजियम, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 47/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/60/2011-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 366.—In pursuance of Section 17 of the Industrial Disputee Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 47/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of The Director Incharge, Salarjung Museum, Hyderabad and their workman, which was received by the Central Government on 10.01.2014.

[No. L-42012/60/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYA LAKSHMI,

Presiding Officer

Dated the 19th day of August, 2013

Industrial Dispute No. I.D. 47/2011

Between :

Sri V. Vijaya Kumar,
H. No. 13-3-396/22/12A,
Sai Durga Nagar, Jiaguda,
Hyderabad-500006. ....Petitioner

AND

Sri A. Nagender Reddy,
Director Incharge, Salarjung Museum,
Darulsshifa Road,
Hyderabad-500002. ....Respondent

APPEARANCES:

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sri, P. Sudheer Rao & D. Sunil Kumar, Advocates

For the Respondent : Sri R.S. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/60/2011-IR(DU) dated 16.9.2011 referred the following dispute between the management of Salarjung Museum, Hyderabad and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The referenece is,

SCHEDULE

Whether the action of the management of Salarjung Museum, Hyderabad in terminating the services of Shri V. Vijaya Kumar, Casual employee *w.e.f.* 24.11.2010, is legal and justified? What relief the workman is entitled to?"

2. The case stands posted for filing of claim statement and documents. Petitioner called absent and there is no representation since long time. Inspite of giving fair opportunity, claim statement was not filed by the Petitioner and the matter is coming up since the year 2011. In the circumstances, taking that Petitioners not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	**Witnesses examined for the Respondent**
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 367.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर इन चार्ज सालारजंग म्यूजियम हैदराबाद के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 46/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल- 42012/61/2011-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 46/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Director Incharge, Salarjung Museum, Hyderabad and their workman, which was received by the Central Government on 10.01.2014.

[No L-42012/61/2011-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 19th day of July, 2013

Industrial Dispute No. I.D. 46/2011

Between:

Sri Syed Habeeb,
H. No. 16-2-738/C, New Malakpet,
Asmangud, TV Tower,
Hyderabad-500036 ....Petitioner

AND

Sri A. Nagender Reddy,
Director Incharge Salarjung Museum,
Darulsshifa Road,
Hyderabad-500002 ...Respondent

APPEARANCES

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sri, P. Sudheer Rao & D. Sunil Kumar, Advocates

For the Respondent : Sri R.S. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/61/2011-IR(DU) dated 30.8.2011 referred the following dispute between the management of Salarjung Museum, Hyderabad and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

Whether the action of the management of Salarjung Museum, Hyderabad in terminating the services of Shri Syed Habeeb, Casual employee *w.e.f.* 24.11.2010, is legal and justified? What relief the workman is entitled to?"

2. The case stands posted for filing of claim statement and documents. Petitioner called absent and there is no representation since long time. Inspite of giving fair opportunity, claim statement was not filed by the Petitioner and the matter is coming up since the year 2011. In the circumstances, taking that Petitioners not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मेनेजर बी एसएन एल निज़ामाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचार्ट (संदर्भ संख्या 57/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/26/2006-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. No. 57/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, BSNL, Nizamabad and their workman, which was received by the Central Government on 10/01/2014.

[No. L-40012/26/2006-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 30th day of September, 2013

INDUSTRIAL DISPUTE No. I.D. 57/2006

Between:

Sri M. Krishna,
S/o M. Narasimha Murthy,
C/o K. Sailoo, H. No. 3-10-320,
Vivekanand Nagar, Nayalkal Raod,
Nizamabad. ....Petitioner

AND

The General Manager,
M/s. Bharat Sanchar Nigam Ltd.,
Telecom District, Subhash Nagar,
Nizamabad. ....Respondent

APPEARANCES

For the Petitioner: M/s A. Raghu Kumar & B. Pavan Kumar, Advocates

For the Respondent: Sri A. Ganapathi Ram, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/26/2006-IR(DU) dated 16.10.2006 referred the following dispute between the management of M/s. Bharat Sanchar Nigam Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of General Manager, Bharat Sanchar Nigam Ltd., Nizamabad in terminating the services of Shri M. Krishna, casual worker *w.e.f.* 11.10.2005 is legal and justified? If not, to what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 57/2006 and notices were issued to the parties.

2. Petioner filed claim statement and documents. It is averred by the Petitioner in his claim statement that he has joined as a casual labourer on the muster rolls of the erstwhile Department of Telecommunications in Nizamabad and worked as such from January, 1992 to December, 1994 under cable laying work of Sub Divisional Officer, Telecom Armoor. Later he was renengaged as House Keeping office boy in June, 2000 and was paid wages on ACG-17. The Government of India established a company by name Bharat Sanchar Nigam Ltd., *w.e.f.* 1.10.2000 and transferred all the staff of Telecom and absorbed staff concerned on their option. He was continued upto 31.8.2005 in Bharat Sanchar Nigam Ltd., without any break and was paid wages @ Rs. 1430/- per month. He was continued with artificial breaks and terminated from services on 11.10.2005 hence this industrial dispute.

3. Respondent filed counter. It is submitted that it could not be verified at this stage that whether Petitioner worked during the period from 1.9.1992 to 1994 as the records pertaining to the said period are not available with the department as weeded out. No letter of appointment was given to him. His engagement for different periods is only casual and he has not worked continuously for a period of 240 days. The petition is liable to be dismissed.

4. Case stands posted for cross examination of Petitioner as WW1. Petitioner called absent. No representation since long time. In the circumstances, WW1's evidence is eschewed. Thereafter, inspite of giving fair opportunity Petitioner is not taking interest in the proceeding. In the circumstances petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Sri J. Vijaya Sarathi, UDC transcribed by him and corrected by me on this the 30th day of September, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Krishna	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 51/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/774/1997-आई॰आर॰ (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 51/1999) of the Central Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s BCCL and their workmen, received by the Central Government on 13/01/2014.

[No. L-20012/774/1997-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT: SHRI KISHORI RAM,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 51 of 1999

PARTIES: The Vice President, Bihar Colliery Kamgar Union, Jealgora, Dhanbad

Vs.

The Project Officer, Bararee Colliery of M/s BCCL, Bhulanbararee, Dhanbad

APPEARANCES :

On behalf of the : workmen/Union	Mr. D. Mukherjee, Ld. Advocate
On behalf of the Management:	
On behalf of the : Management	Mr. D.K. Verma, Ld. Advocate
State:	Jharkhand Industry: Coal

Dated, the 15th Oct., 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/774/97-IR(C-I) dt. 18.1.1999

SCHEDULE

"Whether the action of the management of Bararee Colliery of M/s BCCL in superannuating Sh. R.L. Pandey *w.e.f.* 01.07.1995 from the services of the Company is legal and Justified? If not, to what relief the workman is entitled?"

2.The case of the Bihar Colliery Kamgar Union for the workman R.L. Pandey is that at the time of his appointment on 22.10.1962, his date of birth as 01.07.1939 was recorded in the statutory record as also in the Provident Fund and other records. But suddenly, the management issued him a letter whereby, superannuated him. *w.e.f.,* 19.01.1995. In the year 1987, the Service Excerpt issued to him by the management had also his date of birth, at his objection to it, the Company Medical Board at his reference had determined his age as 50 years as on 04.02.1987,

according to which the actual date of his superannuation should be 4.2.1997. But the anti-labour management victimized and humiliated him by superannuating him on 01.07.1995. Finally, the failure due to adamant attitude of the management in the conciliation proceeding in the industrial dispute raised before the A.L.C.(C), Dhanbad resulted in the reference for an adjudication. Thus, the action of the management in superannuating the workman, *w.e.f.*, 01.07.1996 was illegal, vindictive, unjustified and against the rules of natural justice.

3. The Union in its rejoinder specifically denied all the allegations of the O.P./Management as misrepresentations and stated that the age determined by the Medical Board is final and once the age determined by the Medical Board then recorded in the Matriculation Certificate will not be unconsiderable as per the settled law and policy decision of the management.

4. Whereas with categorical denials, the contra case of the O.P./management is that the workmen was Matriculate, so accroding to his Matriculation Certificate bore his date of birth as 01.07.1935. The workman was working as a Provident Fund Clerk since his appointment on 22.10.1962. The same date of birth of the workman was recorded in the Form B Register of the Company, and accordingly, Service Excerpt was also issued to him by the Management in the year 1987. But the workman raised the objection to it that his Date of Birth (DOB) should be 1.7.1939 as recorded in the C.M.P.F. record. At the reference of the workman to the Medical Board for assessment of his age, the Medical Board assessed his age as 50 years on 4.2.1987. The tampering by the workman himself with his date of birth as 01.07.1939 in the CMPF record while working as a P.F. Clerk came to the knowledge of the management. Thereafter workman submitted an application that he has passed Matriculation Examination in the year 1954, accroding to which his date of birth recorded as 01.07.1935 therein was correct and genuine, it was requested to treat it but not so as assessed medically. Accordingly, the workman retired *w.e.f.* 01.07.1995, thereafter the Union raised the Industrial dispute in the year 1997 after two years of his retirement.

5. In its rejoinder, the O.P./management has alleged that the workman was superannuated in accordance with his date of birth as 01.07.1935 as recorded in the statutory record of the Company.

FINDING WITH REASONS

6. In the instant case, WW1 Ram Laxman Pandey, the workman has been examined. The Management finally declined to examine and witness on its behalf.

Highlighting the admitted fact of the determination of the workman's age as 50 years on 4.2.1987 as also affirmed in his cross-examination, Mr. D. Mukherjee, Ld. Counsel for the Union/workman submitted that the statement of the workman stands corroborated, but the averment of the management in its written statement in lack of any evidence can not take place of proof as held in the case of National Insurance Co. Ltd., Kanpur Vs. Yogendra Nath AIR/1982 (All) 385; likewise the pleading is no substitute for proof as per the decision of the Hon'ble Apex Court reported in 2005(105) FLR 1067, Management of RBI, Bangalore *Vs.* S. Mani & Ors. the claim of the workman is justified.

7. In response to it, Mr. D.K. Verma, the Learned Counsel for the O.P./management has contended that the very admission of the workman (WW1) in his cross examination that factually his Date of Birth as 1.7.1935 is recorded in his form "B" Register as also affirmed by him in his declaration (dt. 5.1.1988-Ex.M.1) about his Matriculate Certificate bearing the same date of birth after being Matriculate in 1954, but he did not submit even the Xerox copy of his Matriculation certificate as sought as per the letter dt. 22.2.1988 of the Sr. P.O., Bararee Colliery issued to him (Ext. M.2); and the workman accepted in his declaration letter his aforesaid date of birth as recorded in his Matriculation certificate, and not to consider his age 50 years on 4.2.1987 as assessed by the Medical Board on his representation in case of differences in his Date of Birth Record in his Service Record and PF Record require no proof; and it falsifies his claim.

On perusal and consideration of the oral and admitted documentary evidence of the workman (WW1), I find that the statement of the workman about his Date of birth 01.07.1939 initially recorded at the time of his appointment as an underground Munshi in the 1962 just as recorded in his P.F. Record as contrasted with his claim for superannaution on 4.2.1997 based on the Medical Report prima facie suffers from vital contradictions. The Workman had been posted as Bonus & PF Clerk since 1985. It stands indisputable fact that the superannuation of the workman in the year 1995 came about in accordance with his DOB(Date of Birth) 01.07.1935 as recorded in his Form-B Register, which was quite just and proper. The argument of Mr. Mukherjee, Learned Counsel for the union/workman appears to be unpersuasive in view of the admission of the workman.

In result, response to the terms of the reference it is, hereby

ORDERED

The action of the management of Bararee Colliery of M/s. BCCL in superannuating Shri R.L. Pandey, *w.e.f.*, 01.07.1995 from the services of the Company is quite legal and justified. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 198/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/741/1997-आईआर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 198/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 13/01/2014.

[F. No. L-20012/741/1997-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT: Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Sec. 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 198 OF 1998

PARTIES : Employers in relation to the Management of Govindpur Area No. II of M/s. BCCL and their workmen.

APPEARANCE:

On behalf of the workmen : Mr. S.C. Gaur, Ld. Adv.

On behalf of the management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 18th April, 2013.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal *vide* their Order No. L-20012/741/97-IR (C-I) dt. 30.11.1998.

SCHEDULE

"Whether the action of the management of Govindpur Area No. III of M/s. BCCL denying for regularisation of S/Shri Manik Chand Singh and 104 others in the Company's Rolls is justified? If not, to what relief the concerned workman is entitled to?"

2. The case of the Bihar Colliery Kamgar Union for workman Manik Chand Singh and 104 others is that they had been working as permanent workmen against permanent vacancy at Jogidih Colliery since long with unblemished record of service. They had put in their attendance for more than 240 days in each calender year. The Standing Order does not provide for the designation of delisted casual workmen as camouflaged by the management with a view to deprive them of their legitimate wages and legal dues. Though the management was also maintaining the statutory records concerning the workmen for deprivation of their legal right, it illegally arbitraily and unreasonably stopped them form their service without complying with the mandatory provision of law. Lateron, the management appreciated the illegal fault, agreed to employ similarly situated thousand workmen of different collieries as underground minor loaders who had put in their 75 days attendance during the calender year 1973 to 1976 as per its policy decision circular and accordingly employed them. On representation of the workmen, despite assurance of the Management made to the Union as well as before the ALC(C) in course of discussion and Conciliation Proceeding, when the management did not provide them employment, the failure of conciliation in the industrial dispute raised by the Union resulted in the reference for an adjudication. The action of the management denying their regularisation was illegal, discriminatory, unjustified and against the principle of natural justice and its Anti labour policy.

3. Not any rejoinder filed on behalf of the Union Representative to the Written Statement cum rejoinder of the Management.

4. The contra pleaded case of the management with categorical denials is that the present reference is summarily legally unmaintainable on the ground of the different issues of regularisation as referred and that one raised by the Union before the ALC(C), Dhanbad. During the period of the year 1973-74, consequent upon the reorganisation of the old working systems, various collieries were amalgamated into one unit and the then existing Railway Sidings were erratically utilised for systematic placement of Railway Wagon. That necessiated engagement of workmen whoever available for loading jobs on irregular basis on a particular day. They were called as delisted Casual Wagon Loaders. But the management discontinued the practice of engagement of such casual wagon Loaders from 1976, as they were not required after completion of the job and the induction of Pay Loaders for loading of wagons. Such persons were not kept on the roll of the Company. However, the names of such delisted casual wagon loaders were used to be entered in their wagesheet and bonus Register maintained for their payment during the period of 1973—76. The management in course of time recruited Badli Miner Loaders and selected some of the delisted casual wagon loaders for their appointment as Badli Minder Loaders.

The Management as per its circular issued for a limited purpose in the year 1986 provided aforesaid casual wagon loaders to apply for their selection and recruitment along with many others for absorption as Miners/Loaders required at the particular time. The aforesaid circular of 1986 was withdrawn in the year 1992, so no scope existed for the demand of their employment. The Union concerned never raised any demand for enrollment of the persons concerned as Badli Miner Loaders from 1976 to 1986 nor about the rejection of their applications/cases by the Selection Committee they had applied for their selection/recruitment, rather the Union raised their false demand based on fabrications for it in the year 1996. These persons were never on the roll of the company and never worked as delisted/ unlisted casual loaders during the period of the years 1973—76. They are job seekers for their employment with the help of the sponsoring union. Their demand for regularisation never arose nor arises in absence of any such rule. Raising the industrial dispute after more than 20 years is barred by Limitation.

As per the Mines Rules provide for maintenance of such records the attendance, payment of wages and bonus only for a period of one year from the last entry, it has become difficulty for the management to preserve their aforesaid huge records. They are not entitled to any relief.

5. The Management in its rejoinder has specifically denied the allegation of the Union and alleged that the delisted casual wagon loaders were not appointed as per the provisions of any Standing Order. They did not belong to any specific cadre for future engagement. Such engagement was purely temporary in nature during the said period of reconstruction of collieries just after nationalisation. The provisions of Standing Order was not applicable to such persons. Since the persons concerned being not on the roll of the company were never engaged at any time on permanent regular status, the question of their alleged termination neither arise nor ariseable even in regard to their alleged stoppage from any service.

FINDING WITH REASONINGS

6. In this reference, three witnesses, namely WWI Duryodhan Kumhar, WW2 Gopal Kumar and WW3 Deonandan Vishwakarma (Sl. Nos. 65, 14 & 29 respectively) out of the 105 listed workmen for the Union and one MWI B Khalko, Dy. Personnel Manager for the management have been examined. WWI Duryodhan Kumhar, one of the workmen, has stated to have continuously worked as Mazdoor at Jogidih Colliery from 1971 to 1976 by completing 240 days of work in each calender year as he got appointment from the erstwhile owner against permanent vacancy; but the management stopped him and other 104 workmen from the work the management though regularised many casual workers, yet refused them to do so despite its assurance for their reinstatement in their jobs by April, 1991.

Similar claim of WW2 Gopal Kr. is that they continuously worked as wagon loader in the said colliery by putting 240 days attendance in each calender year from 1971 to 1976 since their appointment in the former year, but the management without any reason stopped their work without any notice or any payment of compensation to him, as per the Minutes of the meeting held with the Bihar Colliery Kamgar Union and the Director Personnel (its photocopy-marked as Ext. W.1), all male casual wagon loaders lesser than 45 years of age who put in 240 days attendance in the calender year upto 1987 would be regularised as permanent wagon loaders. But the alleged minute at a glance does provide for aforesaid proposal.

Lastly, WW3 Deonandan Vishwakarma has stated about all workmen to have done the job of wagon loader of permanent nature since their appointment by the

Management of Jogidih Colliery in the year 1973 until they were stopped from working in the year 1976; though out of 329 engaged workers, all the workers except 105 workmen were regularised by the Management; the Registers of Bonus, Attendance and Pay bore the receipts of their wages and bonus as proof. But witness (WW3) has admitted in his very chief to have worked for 3 to 4 months in each year under the management and that wagon loading was effected on availability of the work, but wagons were not stationed every day for loading of coal in the Depot.

All the three aforesaid workmen witnesses have affirmed that none of them have any papers to show their appointment in the year 1973, their stoppage of work in the year 1976, or their any Pay slip.

7. Whereas the statement of MWI B. Khalko, the then Dy. Personnel Manager of Jogidih Colliery Crystal clearly reveals that the management had issued a circular in the year 1986 for regularisation of delisted casual wagon loaders putting their attendances for 75 days during the period from 1973 to 1976, but none of the workmen submitted any petition for their regularisation as wagon loaders, and the said circular was withdrawn by fresh order issued in the year 1992; the workmen concerned never worked under the roll of the management, the Union raised the industrial dispute for the claim of the workmen after about 20 years from the alleged date of stoppage of their work, so the claim of the workmen is no justified.

8. Mr. S.C. Gaur, the Ld. Advocate/Union Representative for the Union as per his written argument has to submit that as per policy decision of the management issued in the year 1986, had to engage the wagon loaders as U/G Miner Loaders who worked and put in their 75 days attendance and above during the period of 1973 to 1976, and in the case of females, their husband/sons would be appointed as Badli M/ Loader for U/G Miner ones, and accordingly thousand similar workers were regularised as wagon loaders or as Badli M/Loaders after the said circular, but the management arbitrarily refused these workmen as M/ Loaders.

Whereas the contention of Mr. D.K. Verma, Learned Counsel for the O.P./Management is that admittedly the management had issued the circular dt. 9.5.1986 for the engagement of workers casual wagon loaders completing 75 days attendance in the calender years 1973—76, but was withdrawn by the management as per another circular dt. 28.9.92 and the industrial dispute was raised in 1998, so no such claim of the workmen is sustainable; moreover the evidence of the workmen witnesses have admitted not to possess and paper as a proof of their working as that their evidence is not biased on their pleading.

9. On perusal and consideration of the materials available on the case record, I find the facts as under:

(i) The Union/workmen have not been able to prove how they had completed 75 days attendance in the year 1973—76 as per the said admitted circular;

(ii) According to the oral evidence of the Management witness B. Khalko, then Dy. Personnel Manager of Jogidih Colliery, though the workmen were given opportunity for their application for it, none applied for it; and that the said circular was withdrawn by the Management in the 1992. Since the fact of withdrawal of the aforesaid circular of 1986 in lack of any cross examination stands binding upon the workmen.

(iii) The alleged minutes of the alleged policy of the Management as per Ext. W.1 being dt. 25.2.88 does/cannot be the base for the claim of the workmen.

(iv) Moreover, the reference has neither any proof, expressed or implied, about the engagement of other similar workers' engagement.

Under these circumstances, it stands clear the claim of the Union/workmen for their regularisation is unreasonable and unrealistic. Hence, it is hereby responded in the terms of the reference and accordingly.

ORDERED

Let the award be the same is passed that the action of the management of Govindpur Area No. III of M/s. BCCL in denying the regularisation of S/Shri Manik Chand Singh and 104 others (as per the list enclosed) in the Company's Rolls is quite justified and legal. Therefore, the concerned workmen are not entitled to any relief.

Let the copies in duplicate of the Award be sent to the Ministry of Labour & Employment, Government of India for information and needful publication in the Gazette of India.

KISHORI RAM, Presiding Officer

LIST OF WORKMEN

Name	Father's Name
1. Manik Chand Singh	Sri Murat Singh
2. Baj Nath Mahato	" Mohi Mahato
3. Bhuneshwar Singh	" Nand Lal Singh
4. Ram Prasad Saw	" Huro Saw
5. Rajendra Prasad Kumar	Late Bundu Kumhar
6. Dhaneshwar Gope	" Mahabir Gope
7. Sahdeo Mahato	" Bhala Nath Mahato
8. Amrit Singh,	" Murat Singh
9. Md. Anwar Ansari	Md. Guljar Ansari
10. Dilip Pramanik	Late Dhanjoy Pramanik
11. Hira Lal Paswan	Late Karmu Paswan
12. Dewa Nand Mahato	Late Janki Mahato
13. Ram Khelawan Paswan	Late Kishun Paswan
14. Gopal Kumhar	Sri Sukar Kumhar
15. Binay Kumar Sinha	Late Chakardhar Prasad
16, Binay Kumar Bishiar	Late Indra Narain Bishiar
17. Jagbandhu Banerjee	Late Jagannath Banerjee
18. Chandrika Paswan	Sri Jobi Paswan
19. Ratho Singh	" Pokh Lal Singh
20. Dhanu Rawani	" Moti Rawani
21. Murat Yadav	" Bandhan Yadav
22. Karim Mian	Late Aziz Mian
23. Kodar Yadav	" Chaman Mahato
24. Satish Prasad Yadav	" Sudarshan Yadav
25. Ramesh Yadav	" Chaman Yadav
26. Rajesh Rawani,	Sri Sheo Charan Rawani
27. Praveen Kumar Sinha	" Jitendra Prasad
28. Shankar Chouhan	Late Barhan Chouhan
29. Deo Nandan Vishwakarma	" Parshuram Vishwakarma
30. Shatrughan Riwari	Late Raj Kishore Riwari
31. Parshuram Dubey	Sri Ram Keshwar Dubey
32. Md. Imran	Late Abul Khoyer
33. Abdur Rahim	Late Abul Khoyer
34. Sukhdeo Sharma	" Darshan Barhi
35. Yogendra Gope	Late Sohrai Gope
36. Basudeo Yadav	" Doman Yadav
37. Abul Ansari	Late Latif Ansari
38. Rameshwar Mahato	Sri Debi Lal Mahato
39. Ram Naresh Ram	" Ramdeni Ram
40. Jhari Lal Manjhi	" Jitan Manjhi
41. Shiv Shankar Mahato	" Lal Chand Mahato
42. Sarju Gope	" Mahadeo Gope
43. Prayag Singh	Late Meghu Singh
44. Balram Mahato	Late Gajadhar Mahato
45. Rajeshwar Das	" Mungeshwar Das
46. Basant Paswan	" Bahadur Paswan
47. Ram Bilash Ram	" Jangi Ram
48. Satendra Singh	Sri Sukaran Singh
49. Krishnadeo Manjhi	" Somar Manjhi
50. Jethu Mahato	" Raghu Mahato
51. Kartik Mahato	" Mahadhan Mahato
52. Laxman Mahato	Sri Lal Chand Mahato
53. Pulashi Singh	Bhola Singh
54. Naresh Prasad	Late Bundu Kumar
55. Hakim Yadav	Sri Narma Yadav
56. Baij Nath Rawani	" Budhu Rawani
57. Kuleshwar Singh	Late Palganjan Singh
58. Baldeo Singh	Sri Sukar Singh
59. Jagan Raoy	Late Pati Roy
60. Naresh Bhuia	Sri Tetar Bhuia
61. Sri Nath Ojha	Sri Praduman Ojha
62. Firoz Ahmed	Sarajul Haque
63. Dalgobind Pramanik	Late Lalu Pramanik
64. Suresh Bhuia	Sri Tetar Bhuia
65. Duryodhan Kumhar	Late Chuni Lal Kumar
66. Raju Singh	" Rameshwar Singh
67. Nageshwar Singh	Sri Murat Singh
68. Hemant Kumar Rawani	" Lakhan Rawani
69. Angad Kumhar	" Sohan Lal Kumhar
70. Baldeo Kumhar	Late Mutar Kumhar
71. Ram Lakhan Badhee	Sri Budhan Badhee

Name	Father's Name
72. Alimuddin	Saraful Haque
73. Aftab Hossain	Asgar Hossain
74. Iltaf Hossain	Asgar Hossain
75. Jamuna Rana	Sri Janki Rana
76. Prabhu Nath Ojha	" Praduman Ojha
77. Jheo Nath Ojha	Sri Praduman Ojha
78. Vijay Chouhan	Late Barhan Chauhan
79. Jitu Lal Manjhi	Sri Mangla Manjhi
80. Krishna Chouhan	" Gopali Chauhan
81. Samsad Haider	Late S.M. Haider
82. Akhilesh Kumar Singh	Late Ram Janam Singh
83. Subhasish Bhattacharjee	Sri Rabi Prasad Bhattacharjee
84. Raju Rawani	Sri Narayan Rawani
85. Pratap Rawani	" Sahdeo Rawani
86. Bijay Kumar Singh	" Sita Ram Singh
87. Rameshwar Chouhan	" Gopali Chuhan
88. Shiv Narayan Chouhan	" Gopali Chuhan
89. Bhola Thakur	Somar Thakur
90. Kali Charan Das	Gonu Das
91. Laxmikant Mandal	Bipin Mandal
92. Jeewan Mandal	
93. Mahendra Prasad	Sri Dhanesh Singh
94. Shibu Rawani	" Budhu Rawani
95. Basaduo Bhuia	Late Mansha Bhuia
96. Bimal Singh	Late Chalitar Singh
97. Jiban Kumar Mandal	Sri Atul Chandar Mandal
98. Babu Chand Rabidas	" Jagdish Rabidas
99. Pratap Pramanik	" Manu Pramanik
100. Ali Ansari	Late Latif Ansari
101. Krishna Ram	Ramdeo Ram
102. Sanjoy Nonia	Sri Radhe Nonia
103. Bishwa Nath Yadav	" Narayan Yadav
104. Laljee Yadav	" Chalitar Yadav
105. Dasrath Mahato	" Agbalu Mahato

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 371.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, धनबाद के पंचाट (संदर्भ संख्या 07/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-20012/169/1998-आई आर (सी-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 13/01/2014.

[No. L-20012/169/1998-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT: SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 07 of 1999

PARTIES	:	Jt. General, Secretary Dhanbad Colliery Kramchari Sangh, Dhanbad Vs. General Manager, Sudamdih Area of M/s. BCCL, Sudamdih, Dhanbad
On behalf of the workman	:	Mr. D. Mukherjee, Ld. Advocate
On behalf of the management	:	Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th November, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/169/98-IR(C-I) dt. 16.12.1998.

SCHEDULE

"Whether the action of the management of Sudamdih Area Office of M/s. BCCL in dismissing Sri Durga Charan Mahato from the service of company w.e.f. 30.11.1994 is justified? If not, to what relief the workmen is entitled?"

2. The case of workman Durga Charan Mahato as stated in his written statement, is that he was appointed as Minder Loader in Bhowra (North) Colliery under Bhowra Area of M/s. BCCL in the year 1983 as per the Letter No. G.M./Per/Appt./11/SE/6680-84 dt. 2/3.9.1983. Thereafter he was transferred to Sudamdih Area as Sr. Data Entry Operator as permanent employee of the Company. He had got his employment after full legal formalities under the Land Looser Scheme of the Company consequent upon the acquisition of Mauza Gaur Khunti Mouza No. 113, Khata No. 20, Plot No. 265(P) Area 1.98 acres under P.S. Jorapokhar, Distt. Dhanbad by the Company for its Vendor Bishu Mahato as per the Regd, Sale Deed No. 774 dt. 30.1.1981 as it was the purchased Lands of the Vendor by virtue of his three Regd. Sale Deeds Nos. 12899/1961, 3795/1967 and 20338/1973 respectively, as mutated and rents regularly being paid. But suddenly, the Management illegally issued the workman a false chargesheet as per the Letter No. G.M./(S.A.)/P.S./F-7/92/27462-64 dt. 31.12.1992 for the misconduct on the ground that the land purchase by BCCI did not belong to aforesaid Vendor Bishu Mahato, rather it is the Government of Bihar, Khas Land. The initiation of the proceeding by the Management after a long period of 11 year against the workman was illegal. The domestic enquiry was not conducted fairly, properly and according to the rules of natural justice, as he was neither given full opportunity in it nor furnished with the documents of the lands as Bihar Khas Land, and the report of the Circle Officer concerned as demanded by him. Likewise the management failed to prove the charges levelled against the workman, yet the workman was illegally dismissed as per the Letter No. CGM/(SA)/P.S.Rg./SMO/F-40/94/21579-87 dt. 30.11.1994. Since there was no employer-employee relationship between the Management and the workman prior to his appointment, the workman had not committed any misconduct under clause 26.1.11 of the Certified Standing as alleged by the Management. The action of the Management in dismissing the workman from the service w.e.f. 30.11.1994 is illegal and unjustified. At last, the failure due to the adamant attitude of the Management in conciliation proceeding in the Industrial Dispute raised by the Union resulted in the reference for adjudication.

3. The workman in his rejoinder with specific denials has stated that an invalid enquiry was irregularly conducted by the biased Enquiry Officer. Non-supply of the Enquiry report and proceeding caused great prejudice to the workman.

4. Whereas the case of the O.P./Management as pleaded in its written statement-cum-rejoinder with categorical denials is that the present reference is unmaintainable in law and facts. In the year 1980-81, the workman fraudulently sought his employment in the Bharat Coking Coal India Ltd. Company by claiming himself as a dependent of Bishun Mahato, the owner of the plots of the Land which never belong to his father Bishun Mahato. The land actually belongs to the Government of Bihar (Khas Land). The above act of the workman is a misconduct, so he was issued by the Management the chargesheet dt. 01.02.1992. He submitted his reply, but on finding it unsatisfactory, consequent upon the appointment of Sri Bhagwan Pd. Dy. C.P.M. Bhowra by the Management, the aforesaid Enquiry Officer fairly conducted the enquiry according to the principle of the natural justice, and submitted his enquiry report, holding the charges as levelled to have been established. On the approval from the Competent Authority, the management dismissed the workman w.e.f. 30.12.1994, as the workman had got his employment in the M/s. BCCL under the Land Looser Scheme fraudulently by giving false information about the ownership of the Land. So the dismissal of the workman is legal and justified. The workman is not entitled to any relief. In case of the declaring the domestic enquiry unfair at the Preliminary enquiry, the Management has sought permission for adducing afresh evidence to prove the charges.

5. The O.P./Management in its rejoinder has categorically denied the allegation of the workman, and stated that in view of the employment of the workman under the Land Looser Scheme, the onus of proof lies upon him to prove his title and interest in the Land. The workman raised the Industrial dispute after much delay.

FINDING WITH REASONS

6. In the instant reference, after due hearing and considering at the preliminary point about the fairness of the domestic enquiry, the Tribunal as per its Order No. 31 dt. 15.3.2011 has held the enquiry as quite fair, proper and as per the principle of natural justice. In result, the case directly came up for hearing the final argument on merits.

The workman as per his written argument has to submit that the chargesheet was issued after lapse of 11 years after his appointment in the year 1983, and the chargesheet does not disclose the alleged plot numbers etc., so it was vague. He has cited two Rulings : 2009 L.L.R. 252(SC), Roop Singh Negi Vs. Punjab National Bank, wherein Management witnesses merely tendered the documents and did not prove the contents thereof— The FIR relied upon could not be treated as evidence; further the orders being non-speaking cannot be sustained; even otherwise after the Disciplinary action was initiated against the appellant after five years of the incident as held (Para 120 & 17), and Secondly, L.L.R. 1994 Pat 280, Binay Kumar Singh Vs. State of Bihar & Ors, wherein it has been held

that Disciplinary proceedings related to the allegations of year 1972, the Deptt. proceedings initiated after lapse of 8 years, the allegation became stale by lapse of time and therefore Disciplinary proceeding should not be allowed to continue in relation thereto (Para 4).

Such plea of the workman based on the both the rulings is untenable for the reason that in the instant case all the relevant documents including the photocopy of the Report of Circle Officer, Jharia, concerning the status of the lands sold by Bishoo Mahato the father of present workman, to the B.C.C.L. and accordingly its acquisition by the B.C.C.L. for employment of his two sons workmen Durg Charan Mahato, Kedar Mahato & other five relatives alleged as nephews and son-in-law appears to have been crystal clear substantiated by the Management witnesses concerned before the Enquiry Officer in course of the domestic enquiry. At the investigation of the Vigilance Authorities concerned into the genuiness of the lands of aforesaid Bisoo (Mahto), the domestic enquiry set in the year 1992 and after due departmental enquiry the Enquiry report dt. 2/3.8.1993 was submitted by the Enquiry Officer Bhawan Pd., Dy. C.P.M., Bhowra Area. Truth is always verifiable whenever a question of it arises. None of the rulings seems applicable to the case.

7. Further the workman has to submit that the dismissal by the Appellate Authority, the Area General Manager as per the Certified Standing Order of the Company in this case is illegal as it deprived the appellant of his right to appeal, as such the order of dismissal as an inherent defect is liable to be set aside as held by the Hon'ble Apex Court in the case of Surjit Singh Vs. Chairman and Managing Director reported in FIR 1995 (SC) 817. But the argument of the workman in lack of any such pleading the evidence is also unsustainable. Every Ratio decidendi acts upon the factum of a particular case. So far as the non-supply of enquiry Report and Show Cause Notice to the workman is concerned, non-furnishing of enquiry report to delinquent will not vitiate the enquiry as held by the Hon'ble Supreme Court in the case of Debotosh Pal Coudhary Vs. Punjab National Bank, 2002 LLR 1169(SC). An enquiry will not be vitiated for nonfurnishing of enquiry report and issuing Show Cause Notice to the delinquent before imposing of punishment as in the present in which non prejudice to the delinquent has been established at any moment.

8. Whereas Mr. D.K. Verma, Learned Cousel for the O.P./Management has contended that the workman was chargesheeted for fraudulently getting his employment under the Land Looser Scheme; the enquiry into it was fairly conducted as apparent from the Enquiry Report submitted by the Enquiry Officer on his reasoned finding based on the report of the Circle Officer, Jharia, in respect of the Lands in dispute which belong to the Government of Bihar, not to Bisoo, the father of workman Durga Charan Mahato and his brother Kedar Mahato and others five alleged relatives all of whom were fruaudulently given employment under the same scheme. The charge of the fraudulently obtaining employment was duly proved against the present workman in this case, so punishment of dismissal from the service of the company to the workman was quite proportionate to his misconduct of grave nature a days.

9. After hearing the argument of workman Durga Charan Mahato and Mr. D.K. Verma, Learned Counsel for the O.P./Management, and I have minutely perused all the materials on the case record, I find the facts as under:

(i) There is no dispute in the fact that workman Durga Charan Mahato just as his brother Kedar Mahato with five other alleged relatives Bhola Nath, Kapil Pd., Bihari Pd. and Sateyandra Pd. as nephews and son-on-law of his father Siboo got employment in the colliery concerned under the Land Looser Scheme by virtue of the sale of the total 5.85 lands in issue by aforesaid Siboo (Mahato) as his own lands to the B.C.C.L.

(ii) At the investigation into it by the Vigilance Authority concerned, as per the reports of the Circle Officer, Jharia out of total 5.85 Acres of Lands sold by Bisoo to the company, 4.58 Acre comes under Gairabad, Khata No. 20 is Gairabad Malik Khas, not recorded in any tenant's name, but Area 70 dec. land under Khata 12 in respect of which Revenue Receipt stands recorded in the name of Bhagatu Mahato (and others) from which Bisoo alleged to have purchased. So, the land under the Khata Area 5.15 did not belong to Bisoo, the father of workman Durga Charan Mahato; so his employment at the imitiation of Bisoo under the said Scheme was fraudulent and on false information.

(iii) The present workman in collusion of his father Bisso had fraudulently got his employment by furnishing false information about the lands concerned in course of the said scheme.

In view of the grave nature of the misconduct as proved against the workman, his dismissal from the service of the Company was quite proportionate to it.

In result, it is in the terms of the reference, responded as such and hereby

ORDERED

That the Award be and the same is passed that the action of the management of Sudamdih Area Office of M/s BCCL in dismissing Shri Durga Charan Mahato from the service from the Company w.e.f. 30.11.1994 is quite justified and legal. Hence, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

आदेश

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 372.—जबकि केन्द्र सरकार का यह मत है कि पवन हंस हेलिकॉप्टर्स लिमिटेड के प्रबंधन से संबंधित नियोक्ताओं एवं समसंख्यक दिनांक 15.5.2013 की अनुसूची के संबंध में उनके कामगारों के मध्य एक औद्योगिक विवाद है;

और जबकि इस विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है एवं ऐसी प्रकृति का भी है कि इसमें एक राज्य से अधिक में स्थित पवन हंस हेलिकॉप्टर्स लिमिटेड के प्रतिष्ठानों के इसमें रुचि रखने अथवा प्रभावित होने की संभावना है;

और जबकि केन्द्र सरकार का यह मत है कि उक्त विवाद का राष्ट्रीय अधिकरण द्वारा न्यायनिर्णयन किया जाना चाहिए;

और जबकि केन्द्रीय सरकार ने औद्योगिकी विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुम्बई में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-11012/8/2013-आईआर (सी-I), दिनांक 15.05.2013 द्वारा राष्ट्रीय औद्योगिकी अधिकरण गठित किया तथा न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1क) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया।

और जबकि न्यायमूर्ति श्री गौरी शंकर सर्राफ ने उक्त राष्ट्रीय औद्योगिक अधिकरण का कार्यभार त्याग दिया।

अतः, अब, न्यायमूर्ति श्री सत्य पूत महरोत्रा के इसके पीठासीन अधिकारी से युक्त मुम्बई में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट कर दिया कि न्यायमूर्ति श्री सत्य पूत महरोत्रा इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर इसे न्यायमूर्ति श्री गौरी शंकर सर्राफ द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे। अनुसूची और अन्य शर्तें एवं निबंधन वहीं रहेंगे जैसे वे दिनांक 15.05.2013 के समसंख्यक न्यायनिर्णयन आदेश में उल्लिखित थे।

[सं॰ एल-11012/8/2013-आईआर (सी-I)]
एम॰ के॰ सिंह, अनुभाग अधिकारी

ORDER

New Delhi, the 13th January, 2014

S.O. 372.—Whereas the Central Government is of the opinion that an industrial dispute exists between the Employers in relation to the management of Pawan Hans Helicopters Ltd. and their workmen in respect to the schedule of even No. dated 15.05.2013;

And whereas the dispute involves national importance and is of such nature that the establishments of Pawan Hans Helicopters Ltd. situated in more than one State are likely to be interested in, or affected;

And whereas the Central Government is of the opinion that the said disputes should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government, in exercise of powers conferred by Section 7 B of the Industrial Disputes Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-11012/8/2013-IR(C-I) dated 15.05.2013 with headquarters at Mumbai and appointed Justice Shri Gauri Shankar Sarraf as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication.

And whereas Justice Shri Gauri Shankar Sarraf relinquished the charge of the said National Industrial Tribunal.

Now, therefore, a National Industrial Tribunal is consituted with headquarters at Mumbai with Justice Shri Satya Poot Mehrotra as its Presiding Offcer and the above said dispute is referred to the above said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shankar Sarraf and dispose of the same accordingly. The schedule and other terms and conditions shall be remain same as mentioned in the Adjudication Order of even No. dated 15.05.2013.

[No. L-11012/8/2013-IR(C-I)]

M.K. SINGH, Section Officer

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 373.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 57/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 57/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the

industrial dispute between the employers in relation to the management of Chief Executive, Department of Atomic Energy, Hyderabad and their workmen, which was received by the Central Government on 10/01/2014.

[No. L-42012/03/2014-IR (DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: — Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C.No.57/2006

Betwen:

Smt. B. Lingamma,
W/o Ramji,
R/o H.No.10-1/148,
Nehru Nagar Colony, Block-III, H.C.L. X Roads,
ECIL Post, Ranga Reddy District,
Hyderabad- 62. .....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad- 500062. .... Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper inside the Respondent unit along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10(1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act. Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.*, within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted

to any outsider at any point of time *i.e.*, contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over me service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Shri P. Narasimha, the contractor. Respondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer. NFC, It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 registration of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistant. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970, Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential

quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She cannot claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judicata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Wl to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter and LC Nos. 29 to 40/ 2006 are clubbed together in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in this case *i.e.*, LC 28/2006, accordingly in respect of all these cases *i.e.*, LC 28 to 20 on behalf of respondents WW1 in this case alone has been cross examined, though separate chief examination affidavits of WWl have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separalely. In the given cirucmustances nad for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually. On behalf of the Respondent MW1 was examined and exhibits Ml to M8 are marked.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal cannot entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal, This contention cannot be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations. Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8 Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001 In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947, Only recently *i.e.*, in the year 2010 limitation has been prescribed for preferring industrial disputes invoking 5ec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various

enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extraordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No.4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however. Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e. a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for fhe establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-calfed contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and Ors. *Vs.* National Union Waterfront Workers and Others {(2001) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner

and other workmen and other related aspects. It is the burden of the Respondent replace all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such, documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs, in the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to he taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case; the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to he decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act. 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]. "

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F(b) and there shall be compliance of Sec. 25F(c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service. This point is answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri. Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Lingamma	MW1 : Smt. A. Rama Devi

Documents marked for the Petitioner

Ex.W1:	Photostat copy of order in WP No. 29210/ 1998 dt. 25.9.2000
Ex.W 2 :	Photostat copy of representation dt. 11.4.98
Ex.W 3 :	Photostat copy of order in SLA (Civil) Np. 13451/2001
Ex.W 4 :	Photostat copy of representation dt. 3.5.96
Ex.W 5 :	Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98
Ex.W 6 :	Photostat copy of reprsentation dt. 9.10.98

Ex. W 7 : Photostat copy of order in WA No. 1602/1999

Ex.W 8 : Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1 : Photostat copy of order in WPNo. 5592/1991

Ex. M2 : Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3 : Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4 : Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy. Contractor

Ex. M5 : Photostat copy of order in contempt case No. 1903/98

Ex. M6 : Photostat copy of order in WPNo. 29210/1998 dt. 25.9.2000

Ex. M7 : Photostat copy of order in WA No. 1602/1999

Ex. M8 : Photostat copy of receipt from Kapra Municipality dt. l.1.1999

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 374.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव डिपार्टमेंट ऑफ़ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 31/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/01/2014 प्राप्त हुआ था।

[सं. एल-42012/3/2014-आई आर (डी यू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I. D. No. 31/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Chief Executive, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 10/01/2014.

[No. L-42012/3/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August. 2013

INDUSTRIAL DISPUTE L.C. No. 31/2006

Between:

Smt. Y. Pushpa.
W/o Y Somaiah.
R/o H.No.10-1/612,
Nehru Nagar Colony, Block-1, Ashok Nagar,
Near N F.C. ECIL POST,
Ranga Reddy District,
Hyderabad - 62. .....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex.
Department of Atomic Energy,
Hyderabad- 500 062. ....Respondent

Appearances:

For the Petitioner : M/s G. Ravi Mohan, G. Narersh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the

power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec,10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition. Petitioner was terminated from the service in the month of October. 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.* within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.* contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner, In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly. Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P.. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947, Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar *Vs.* Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others *vide* order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P, Narasimha, the contractor. Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the Kapra municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works

such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads *vide* letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government, There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 2921 0 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'bLe Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Wl to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e.LC No.31/2006 along with other L.C Nos. taking from L.C Nos. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case *i.e.* LC 28/2006, Accordingly in respect of all these cases *i.e.* LC 28 to 40 of 2006, Smt. T Saradha, WW1 in L.C. 28/2006 alone has been cross-examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more. Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.Ml to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points thai arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?

6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial

Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to he decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec,2A(2) of Industrial Disputes Act. 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly,

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Honble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001, In this regard, it can clearly he seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently *i.e.* in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec,2A(2) of Industrial Disputes Act, 1947 by enacting Sec,2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation. This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with die ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more.

Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can he seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No, 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regulafisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210. 1998 will not act as res judicata for the present proceedings. This point is answered accordingly.

12. Point No. 4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however. Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.* a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor whether the principal employer *i.e.* the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs, National Union Waterfront Workers and Others (2001l) 7 SCC page 1, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken thai she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed lo establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates thai there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up

and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petihoner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No,4 alone.

22. Evidently. Respondent ceased to take services of the Petitioner since 23.10,1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediaiory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:—

"25-F; Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by thai employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in tieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any pan thereof in excess of six months; and

(c) Notice in the prescribed manner fs served on the appropriate Government [or such authority as may he specified by the appropriate Government by notification in the Official Gazette]."

26- As can he gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely he held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec,25F(b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Shartna Vs. Public Health Division [(20I)J 5 SCC 497] Hon'ble Supreme Court of India considered ihe effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is had and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely he held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for die period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service, Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Y. Pushpa	MW1: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex.Wl:	Photostat copy of order in WP No.29210/1998 dt.25.9.2000
Ex.W2:	Photostat copy of representation dt. 11.4.98
Ex.W3:	Photostat copy of order in SLA (Civil) Np, 13451/2001
Ex.W4:	Photostat copy of representation dt. 3.5.96
Ex.W5:	Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98
Ex,W6:	Photostat copy of representation dt.9.10.98
Ex.W7:	Photostat copy of order in WA No.1602/1999
Ex W8:	Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex.Ml:	Photostat copy of order in WP No.5592/1991
Ex.M2:	Photostat copy of receipt from Kapra Municipality dt. 13.11.98
EX-M3:	Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
Ex.M4:	Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramany Reddy, Contractor
Ex.M5:	Photostat copy of order in contempt case No. 1903/98
Ex.M6:	Photostat copy of order in WPNo.292I0/1998 dt. 25.9.2000
Ex.M7:	Photostat copy of order in WA No. I602/1999
Ex.M8:	Photostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 375.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी जनरल मेनेजर इंडियन कौसिल ऑफ एग्रीकल्चरल रिसर्च एंड अदर्स हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 105/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10-01-2014 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2014-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 105/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy Director General, The Indian Council of Agricultural Research and Others, Hyderabad and their workman, which was received by the Central Government on 10.01.2014

[No. L-42012/3/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt, M. Vijaya Lakshmi, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C. No. 105/2005

Between:

Sri K. Siddanna,
S/o Balashetty,
C/o V & P Kuppanagar,
Jharasangram, Zaheerabad &
C/o. M/s.T. Sharath, Advocates
Plot No. 145, Road No. 10, Jubilee Hills,
Hyderabad .....Petitioner

AND

1. The Deputy Director General,
The Indian Counsel of Agricultural
Research, Krishi Bhavan, New Delhi.

2. The Chairman,
Dcccan Development Society,
Office at A 6 Mttra Appts,
Basheerbagh, Hyderabad.

3. The Principal,
Krishi Vigyan Kendra,
Post Box No.213, Zaheerabad.

.....Respondents

Appearances:

For the Petitioner : M/s. T. Sharath & G.N Raju, Advocates

For the Respondents: M/s. N.R. Devaraj & W Satyanarayana, Advocates for R1

M/s. B. Nalsin Kumar, K.S. Rahul, M.S Chandresh & K.Aravind Goud, Advocates for R2 & R3

AWARD

This petition under Sec.2 A (2) of the I.D. Act, 1947 has been filed by Sri K. Siddanna challenging his termination against the Management of The Indian Counsel of Agricultural Research and Krishi Vigyan Kendra. The Petitioner filed this petition seeking for setting aside the order of termination and to direct the Respondents to reinstate the Petitioner with full baek wages, continuity of service and other attendant benefits.

2. The averments made in the petition in brief are as follows:

Respondents one and two have common objects to promote and accelerate the process of education and training in the field of agriculture and to achieve these common objects they entered into a Memorandum of Understanding dated 19.7.1991 deciding to pool funds sent with man power and equipment. For the purpose of achieving these objectives Respondent first established the third Respondent at various districts in the state of A.P.. Second Respondent recruited about 22 staff in various fields in different years commencing from 1904, 2nd Respondent recruited the Petitioner as attendant on 4.6.1991 for placing with the third Respondent at Medak district. Ever since the appointment Petitioner has been discharging his duties to the satisfaction of the Respondents, In his letter of appointment it is stated that the appointment was temporary and till the continuation of the project and thy it is liable to be terminated without assigning any reason. On 2.9.97 first Respondent addressed letter to all the Kendras regarding the funding, norms of building infrastructures and staffing pattern. It is stated in the said fetter that revised staff strength of 16 will be applicable for KVKs when the existing staff in the KVK are adjusted/redeployed within the over all institutes system or they are transferred or promoted or retired. Trie staff already adjusted should be treated as final. The position so vacated because of transfer promotion or retirement shall not be filled up in case these are exceeding revised strength of 16. Till such time the host institute make adjustment through redeployment or promotion or retirement, the existing staff shall continue to work in the KVK. For filling up of any vacant post prior approval of the council will have to be obtained" after receiving the said letter of the first Respondent without even assigning any reason 2nd Respondent issued tetter of termination dated 25.9.97 to the Petitioner and others terminating their services on the ground that the main cut in funding is related to staff positions. First Respondent has specifically stated in the letter dated 2.9.97 that the existing staff shall continue to work for KVK i.e., third Respondent. First Respondent has approved the appointment of the Petitioner. Thus under no circumstances 2nd Respondent can not terminate the services of the Petitioner on the ground of financial problems. Further, the persons who are appointed subsequent to the Petitioner has heen left in the service. Absolutely, there is no basis for terminating the services of the Petitioner over looking the years of his service put in by him in the organisation. Petitioner questioned the said letter of termination by way of WP No.7588 of 1998 and the Han'ble High Court of A.P. permitted the Petitioner to discharge his duties. Pending interim orders Petitioner was denied to discharge the duties pursuant to the interim order passed in WPMP No.43754/1998 in WP No,355l0/1998, Since the third Respondent failed to comply with the interim order Petitioner filed contempt petition, since the Respondent raised the question of maintainability of writ petition on the ground fiiat Respondent No.3 does not fall under article 12 of Constitution of India Petitioner has withdrawn the writ petition on 23,1.2004 with leave of the Hon'blc High Court of A.P. to institute appropriate proceeding before this tribunal. Third Respondent who pleads on one hand that there are no funds and hence, services of the Petitioner were terminated, has issued a paper advertisement in Mareh. 2002 in Employment News calling for new appointments, on the other hand. It is not the ease of the Respondents that the project has come to an end. They are went upon to terminate the services of the Petitioner. All

India KVK Employees Union filed WP No 1 26/98 before Hon'ble Supreme Court of India, seeking for regularisation of their services in all Kendras of India, While disposing off the said writ petition supreme court held that even according to the affidavit filed by the first Respondent and letter dated 24.6.98 the grievance of the writ petitioners does not survive In their counter first Respondent stated that the services of all employees are protected. Thus, Petitioner can not be terminated and the action of the third Respondent is illegal and violative of principles of natural justice and the same is liable to be set aside. For no fault of his, Petitioner is victimized and the practice of the third Respondent is unfair.

3. First Respondent filed his counter with the averments in brief as follows:

First Respondent has nothing to do with the engagement or employment to the Petitioner made by the 2nd Respondent Petitioner and others are neither employed nor employable nor retrenched by the first Respondent. This is solely in the domain of 2nd Respondent and 2nd Respondent alone is responsible. The number and the trades of the members of staff are purely based on their requirements and utility. The services of Petitioner and five others were terminated by 2nd Respondent on the ground that strength of the staff of R3 has been reduced to 22 to 16. Only the services of junior most persons were terminated as they were engaged on purely temporary basis and are liable to be terminated at any time without any further notice. Petitioner is one of the junior most person whose services were terminated. The activities taken up in the given scheme are social welfare activities for the upliftment of workmen and helping the poor and downtrodden in the society by implementing various schemes. In the said process personnel engaged in one scheme will be shifted to another and redeployment also will be there according to the requirement. As per the circumstances warrant Rl prescribes the number of persons to be engaged which either increases or decreases according it its requirements or necessity leaving it to the discretion of 2nd Respondent and the 2nd Respondent arranges the required number of staff. If there is no need the 2nd Respondent may terminate the services of the employees. R1 is not liable for any such activities of 2nd Respondent. Thus, first Respondent is not a necessary party and no relief can be sought for against him. Its misjoinder of parties as far as Rl is concerned. Rl is not an industry as defined u/s 2(j) of Industrial Disputes Act, 1947. Further, Rl is under the control of Central Government and comes under the definition of "State" under Article 12 of the Constitution. All the service rules and conditionality of services in FRSR and CCS & CCA Rules are applicable to the employees of Rl. As per the principle laid down in the case of Rajendra Vs. State of Rajasthan (1999) (2) SCC 317 when the post temporarily created for fulfilling the needs of a particular project or scheme limited in its duration comes to an end on account of the need for the project was fulfilled or had to be abandoned wholly or partially for want of funds, employer can not be compelled to continue employing such employees. The petition is liable to be dismissed.

4. 2nd and 3rd Respondents filed their counter with the averments in brief as follows:—

2nd Respondent is a charitable institution working in the interest of rural poor, By developing them economically, socially and educationally by extending all support needed by them. It's a non-profit organisation which functions with the funds released by national and international donors and also adopting by nodal schemes of the state and central governments. They are not an industry within the meaning of the ID act. Hence, petition is not maintainable. Respondents only assist the rural poor by educating them and by imparting techniques which are not activities of industry under this act. 2nd Respondent is a registered rural development organisation. First Respondent has the responsibility for agricultural research education and for extension of education in the country and established Krishi Vigyan Kendras/trainee training centres in the districts with the object of promoting and accelerating the progress of education and training in the field of agriculture and allied areas under the scheme known as KVK/TVT on individual projects. Each project is entrusted to an implementing agency selecting a suitable organisation in the district. For the district of Medak 1CAR has considered the 2nd Respondent as an implementing agency. They entered into a memorandum of understanding whereunder first Respondent has agreed to provide grant for the project according to the pattern of assistance approved under TTC/KVK. subject to personal and budgetary limitations imposed by the Government of India from time to time. The administrative control over the staff employed under the scheme shall rest with the 2nd Respondent. Petitioner was appointed for the third Respondent as attendar on adhoc basis and his appointment was subject to termination at any time. His salary was paid from out of the funds provided by the first Respondent. His appointment was liable for termination without assigning any reason and without notice. While so, first Respondent issued letter dated 26.5.97 on funding patterns, norms of building infrastructures and staff in KVKS and also fixing staff pattern of each KVK comprising 16 courses. Further, 1st Respondent issued letter dated 2.9.97 stating that all KVKs which have not completed five years from the year of sanction will be provided 100% grants till they complete five years. Thereafter, all these KVKs will be funded by the lst Respondent and implementing agency for a period of 5 years. On completion of 10 years the funding pattern would be 50:50 percent by the first Respondent and hosting institute and it is further stated that all KVKs irrespective of their existence will be funded on 100% basis during the year 1997-98. In view of the drastic change in

the funding process and second Respondent being a non-governmental organisation entirely dependent upon donor funds, is not in a position to continue the staff excess of 16. Thus, in exercise of power conferred in the above mentioned letters 2nd Respondent issued letter dated 25.9.97 informing the Petitioner and others that their services will not be required from 1.4.1998. Suppressing material facts, Petitioner and others filed WP 7588 of 1998 and obtained exparte interim orders. Respondents filed counter affidavits and thereafter, the said petition was dismissed for default. After waiting for a reasonable period Respondents addressed letter dated 2.9,98 discontinuing the services of the Petitioner and others by bringing the original termination orders into force. Thereupon Petitioner and others filed a petition restore WP 7588 of 1998. Respondents filed their counter affidavit mentioning the factum of termination. After hearing both parties Hon'ble High Court of A.P. restored WP No.7588 of 1998 but. without reviving the exparte interim order. Ultimately the said writ petition was dismissed by order dated 10.2.99 with a finding that, Petitioners can not seek relief under article 226 of Constitution of India, Petitioners filed WP no. 35510 of 1998 challenging the letter dated 2 9.98 and also Contempt Case No. 872 of 1998 but ultimately they were all withdrawn. Since it is not an "Industry" as defined in Sec.2(j) of Industrial Disputes Act, 1947, the question of Petitioner falling within the meaning of workman as defined in Sec.2(S) does not arise. Therefore, Sec.25(F) 25(G) And 25 (H) of the said act are not applicable to the facts and circumstances of this case. It is only a charitable institution and does not fall within the meaning of industry. The termination of the Petitioner would not amount to retrenchment under Sec.2(oo) (bb) of the Industrial Disputes Act, 1947. Petitioner was appointed on 1.7.94 but not on 4.6.91 as alleged. The contention of the Petitioner that 2nd Respondent issued letter of termination dated 25.9.97 without giving any reason on the ground of main cut in funding relating to staff positions and that in the letter dated 2.9.97 Ist Respondent specifically stated that existing staff shall continue to work, are all not correct. Harmonious reading of said letter would reveal that 2nd Respondent is given liberty to reduce the staff strength to 16. 2nd Respondent reserved the power to terminate the services of the Petitioner without notice and without assigning reasons, while giving appointment order. The contention of the Petitioner that the employees who have been appointed in the year 1997 are left in the service, and that there is no basis for removal of the Petitioner overlooking his service are all incorrect. Petitioner was terminated due to change in funding pattern by funding institutions. Whereas paper advertisement dated 23-29 March, 2002 was not the post held by the Petitioner, it relates to different post for which Petitioner is not qualified. The contention that first Respondent filed his counter in WP No. 126 of 1998 before Hon'ble Supreme Court of India stating that services of all employees is protected is not correct. The said proceeding has no bearing on these Respondents. Petitioner is not entitled for the relief sought for. Petition is liable to be dismissed.

5. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Ex.Wl to W9 were marked. On behalf of Respondents MW1 and MW2 were examined and exhibits Ex.Ml to M3 are marked.

6. Heard the arguments of either party. Written arguments were filed by Respondent and the same were considered.

7. The points that arise for determination are:

I. Whether activities of Respondents comes under the purview of definition of industry and whether Petitioner is a workman?

II. Whether the orders passed hy the 2nd Respondent terminating the services of the Petitioner is liable to be set aside? If so, on what grounds?

III. To what relief Petitioner is entitled to?

8. Point No.(I):

It is the contention of the Petitioner that he is a workman under Sec.2(s) of the Industrial Disputes Act, 1947 and the activities of the Respondents amounts to industry, under Sec, 2(j) of the Industrial Disputes Act, 1947. Sec. 2(j) of the said act read as follows:

Industry means any business, trade, undertaking, manufacture or calling of employees and includes any calling service, employmen, handicraft or industrial occupation or avocation of workman.

" Whereas, Sec.2(s) reads as follows:

'Workman means any person (including an apprentice) employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work far hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957;or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of

the powers vested in him, functions mainly of a managerial nature.

9. Now, it is to be verified whether the activities of the Respondents attract the ingredients of the term industry, cited above. Admittedly, the activities of the Respondents are carrying out agricultural research, veterinary matters, raising agricultural productions etc., and rendering assistance to rural poor to develop economically, socially and educationally with the help of the funds donated by donors or the government, as per the schemes and objectives for which purpose the funds are released.

10. It is the contention of the Respondents that their activities do not generate any profits, and on the other hand they are philanthropical activities and thus, they do not fall under the category of industry. It is not the contention of the Petitioner that Respondents are earning any profit through their activities. Now, it is to be verified whether the above mentioned activities of the Respondents do fall under category of industry. As per the definition of industry given under sec.2(j) of the Industrial Disputes Act. 1947, any service also will come under the purview of the said definition.

11. Learned Counsel for the Respondents 2 and 3 relied upon the principles laid down in the case of Physical Research Laboratory Vs. KG Sarma (l997) 4 SCC page 257, whereunder, a Division Bench of Hon'ble Supreme Court of India has distinguished the principles laid down in the case of the Bangalore Water Supply And Sewerage Board vs. A. Rajappa, [1978 (2 SCC 213)] and held that "while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principle "noscitur a sociis was applied and it was held that they wauld be "industry" only if they are found to be analogous to trade or business. Furthermore, an activity undertaken by government cannot be regarded as an industry if it is done in discharging sovereign functions."

2. Whereas Learned Counsel for the Petitioner relied upon the principles laid down by the Apex Court in the case of JK Cotton Spinning and Weaving Mills Co Limited Vs. Labour Appellate Tribunal of India IIIrd Branch, Lucknow 1964-AlR(SC)-0-737/1964-SCR-3-724 and in the case of Mahila Samiti, Tikamgarh and State of Madhya Pradesh and Ors. 1993 III LLJ page 46, in support of his contention that the principles laid down in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa, (1978) 2 SCC 213 and Satynarayana Sharma and Ors. Vs. National Mineral Development Corporation Ltd. and Ors, 1993 III LLJ, 472 still hold the field.

13. In the case of Nehru Yuva Kettdru Sangathan Vs. Union of India, the Hon'ble High Court of Delhi considered the principles laid down in various cases including the case of Physical Laboratory (relied upon by the respondents). Considering the legal situation that in the case of Coir Board *Vs.* Indira Devi 1988 III SCC 259, the Hon'ble Supreme Court of India had decided to refer the decision in Bangalore Water Supply case for reconsideration by a larger Bench but subsequently three judges Bench of the Hon'ble Supreme Court of India held by its order dated 10.11.1998 in Coir Board case that Bangalore Water Supply Case does not require any reconsideration, Hon'ble Delhi High Court had categorically held in the case of Nehru Yuva Kendra Sangathan *Vs.* Union of India after discussing various legal precedents, that obviously Bangalore Water Supply case which is a seven Judge Bench judgement rendered by the Apex Court still holds the field. Further Hon'ble Delhi High Court referred to the case of General Manager Telecom vs. S. Srinivasa Rao 1997 SCC 767, whereunder also it was held by three Judges Bench of the Apex Court that the Bangalore Water Supply case holds the field and it is binding precedent.

14. It is not the case of the respondents that any larger bench of the Apex Court was formulated for reconsidering the principles laid down by the seven judges Bench of Apex Court in Bangalore Water Supply case. Thus, it is very much clear that the said judgement continues to be a binding legal precedent.

15. In the Bangalore Water Supply case, it is held that "absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relation. "

16. In the circumstances, just because the activities of the respondents do not generate any profit and they are philanthropic in nature, it will not change the fact that the said activities come under the purview of the definition of industry since the decisive test is the nature of the activity with special emphasis of employer and employee relationship. The nature of the activity in this case is a systematic activity organized with cooperation between employer and employees for rendering services calculated to satisfy human wants and wishes i.e., improving the production of agricultural products and also developing the rural poor, socially economically and educationally etc. Thus, the activities of the Respondents attract the ingredients of the definition of 'Industry' as provided under Sec. 2(j) of Industrial Disputes Act, 1947 and thus, it is an 'Industry'.

17. Consequentially, the persons who work for the Respondents will certainly come under the purview of the definition of the workman given under Sec. 2(s) of the Industrial Disputes Act, 1947, since, as already cited above, Sec.2(s) of the said Act, provides that any person employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward is a workman. Thus, Petitioner who has been appointed as

an Horticulture extension attendant by 2nd Respondent and has been deputed to work so with the 3rd Respondent will certainly come under the purview of the definition of the workman referred to above. In the case of Mahila Samithi, Thimkkamgarh Vs. State of M.P. 1993 III LLJ page 468 relied upon by the counsel for the Petitioner it is held to the effect that the employees of the Mahila Samithi which is engaged in systematic activities of promoting training women in family planning programme etc., which is an industry, will certainly come under the purview of the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947. This principle is a guiding principle to arrive at the conclusion that the Petitioner is a workman.

18. Thus, it can safely be held that the activities of the respondents come under the purview of the industry as defined under Sec. 2(j) of Industrial Disputes Act, 1947 and Petitioner comes under the definition of the workman under Sec. 2(s) of the Industrial Disputes Act, 1947.

This point is answered accordingly.

I9. Point No. II:

It is an undisputed fact that Petitioner who has been working as Horticulture extension attendant sinee 1.7.1994 with the 3rd Respondent, being appointed to the said post by the 2nd Respondent by virtue of the order dated 24.6.1994 has been terminated from services by the 2nd Respondent w.e.f. 1.4.1998 by virtue of Ex.W4 the letter dated 25.9.1997. The reason for termination of services of the Petitioner have been given in Ex.W4 as that first Respondent has changed its guidelines and have provided a reduced budget to voluntary organisation to run their KVKs that the main cut in funding is related to staff positions and inspite of their best efforts 2nd Respondent could only get a grace period of some months and as the cut becomes effective from 1.4.1998, the services of Petitioner were terminated with effect from the said date.

20. Petitioner is questioning the reasonableness of termination of his services in that manner and claiming that 2nd Respondent cannot terminate services of the Petitioner on the ground of financial problems and that further persons who are appointed subsequent to the Petitioner have been left in service and thus, there is discrimination. It is further claimed by the Petitioner that 3rd Respondent who pleads on one hand that as there are no funds the services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in employment news calling for new appointments on the other hand and that as per the terms of his appointment Petitioner is entitled to be continued in service until the project comes to an end.

21. Whereas it is the claim of the Respondents that Petitioner is one of the juniormost persons and therefore his services were terminated, as there was need for retrenchment. It is the further contention of the Respondents that Petitioner was appointed on adhoc basis and his appointment was subject to termination at any time without assigning any reason and without notice and further that in view of the drastic change brought out in funding process by the 1st Respondent, 2nd Respondent was constrained to terminate the services of the Petitioner. The 2nd Respondent is further denying the truth of the contention of the Petitioner that the employees employed subsequent to him are still left in service and that paper advertisement dated 23-29 March, 2002 does not relate to the post of Petitioner.

22. Thus, it is to be verified that any person who was appointed subsequent to the Petitioner have been left in service, while terminating the services of the Petitioner and if so it is a justified action. The other point to be decided is whether the Respondents who have terminated the services of the Petitioner claiming that for want of funds they cannot continue him in service are justified in making new appointments in March, 2002. The third aspect to be decided is whether Respondents can terminate the services of the Petitioner without notice and without assigning reasons and also without paying compensation.

23. As to the first point mentioned above, is concerned, Ex.W8 is the details of the staff working in the given KVK as on February, 1998 produced before the court by the Petitioner. This document has been marked with the consent of the Respondents on 12.7.2006. That means the correctness of this document is admitted by the Respondents. As can be seen from mis document Petitioner has been appointed on 1.7.1994 whereas, one Kasyap training assistant has been appointed on 31.3.97. There are several other employees who were appointed in the years 1995 and 1996 also. Thus, it cannot be termed that Petitioner is the juniormost employee of the Respondents. As can been seen from Ex.W4, the reason given for termination of the services of the Petitioner is that as the cut in funding is relating to staff positions Petitioner's services were terminated and it is the claim of the Respondents that as Petitioner is one of the juniorrmost employees his services were terminated due to cut in the funding. But the fact appears to be otherwise, as per the discussions held above, in the light of the contents of Ex. W8. There are several other employees who juniors to the Petitioner when the dates of appointment of these persons are considered, are still continuing in the service. It is not the claim of the Respondents that considering the nature of the work being done by the various workmen and its importance to the organisation, they have chosen to retain some and terminate the others. It is their categorical contention that as the Petitioner was one of the junior most employees his services were terminated, which is not a correct statement. Therefore, the contention of the Petitioner that the persons who are appointed subsequent to him were left out in service and his services were terminated by the Respondents, is to be accepted as a correct contention. It amounts to discrimination which shall never be allowed. It

is the principle that the last come first go. So the action of the Respondents in this regard is not justifiable.

24. As to the second aspect to be considered is concerned certainly, the Respondents are not justified in recruiting new persons when they terminated the services of the Petitioner on the ground of non-availability of sufficient funds. It is the contention of the Respondents that the vacancies advertised by virtue of ExW7 advertisement are different posts to the post held by the Petitioner, that Petitioner got no qualifications to hold any such posts and therefore, they can not be find fault with for making new appointments.

25. But the fact remains that Petitioner who was in the service of Respondents was removed from service only on the ground that funds were not available. If funds were not available no fresh appointments can be made. The grievance of the Petitioner is that Respondents are making new appointments. It is a fact that new appointments were made. Then there is no justification, in terminating the services of the Petitioner.

26. As to the third aspect is concerned, just because it is mentioned in the appointment order that without notice Petitioner's services can be terminated Respondents can not do as such since, the provisions of Sec.25(F) of the Industrial Disputes Act, 1947 provides for one month's notice, and payment of retrenchment compensation to the workmen who is retrenched. Thus, irrespective of the contents of the appointment order given to the Petitioner who is a workman, Respondents are liable to give one month notice. In this case, sufficient notice has been given to the Petitioner, but evidently no retrenchment compensation has been given to him. On this ground also Ex.W4 order is not a maintenance order.

27. In view of the foregone discussion of the material on record it can safely be held that Ex,W4 the order passed by the 2nd Respondent terminating the services of the Petitioner is not maintainable and is liable to be set aside.

This point is answered accordingly.

28. Point No. III:

In view of the findings arrived at above, Ex.W4 order is liable to be set aside and Petitioner is entitled for reinstatement into service. Considering the fact that the Petitioner has approached the court belatedly, i.e., about 7 years after his removal from service, he is not entitled for any back wages, but he is entitled for continuity of service and other attendant benefits.

This point is answered accordingly.

29. Result:—

In the result. Petition is allowed. The impugned order dated 25.9.97 issued by the 2nd Respondent is hereby set aside. Petitioner shall be reinstated into service forthwith. He is entitled for continuity of service and other attendant benefits except back wages.

Award is passed accordingly. Transmit,

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesscs examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Siddanna	MW1 Sri K Srinivasa Rao MW2 Sri A. Giridhar

Documents marked for the Petitioner

Ex.Wl	Photostat copy of Memorandum of Understanding dt. 19.7.1991
Ex,W2.	Photostat copy of Ir. No.l (I)/96-AE-l dt.2.9.l997
Ex.W3:	Photostat copy of appointment Ir. dl 24.6.1994
Ex.W4	Photostat copy of Ir. dt. 25.9.1997
Ex.W5:	Photostat copy of order in WP Nos7588, 1998 & 35510/1998
Ex.W6:	Photostat copy of order in Hon'ble Supreme Court dt.24.8.1998
Ex.W7:	Photostat copy of employment newspapcr cutting dt.23-29 March, 2002
Ex. W8:	Photostat copy of statement showing working staff in KVK, Zaheerabad as on February, 1998
Ex.W9:	Paper publication dared 19.4.2006

Documents marked for the Respondents

Ex.Ml:	Attested mpy of Memorandum of Understanding between the Indian Council of Agricultural Research, Krishi Bhawan, New Delhi and Deccan Krishi Vigyana Kendra
Ex. M2:	Photostat copy of Ir. No 1(1)96-AE-1 dt.26.5.1997
Ex. M3:	Photostat copy of Ir. No 1(1)/96-AE-I dt. 2.9.1997

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 376.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी जनरल मेनेजर इंडियन कौंसिल ऑफ एग्रीकल्चरल रिसर्च एंड ओठेर्स हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 106/2005) को

प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2004-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, 13th January, 2014

S.O. 376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (I.D No. 106/2005) of the Central Government Industrial Tribunal/Labour Court , Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy Director General, The Indian Council of Agricultural Research and Others, Hyderabad and their workman, which was received by the Central Government on 10/01/2014.

[No. L-42012/3/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: — Smt M. Vijaya Lakshmi,

Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C.No. 106/2005

BETWEEN:

Sri Md. Mahaboob,
S/o Md. Shaik Ahmed,
C/o M/s. T. Sharath, Advocates
Plot No. 145, Road No. 10, Jubilee Hills,
Hyderabad. .....Petitioner

AND

1. The Deputy Director General,
   The Indian Counsel of Agricultural Research,
   Krishi Bhavan, New Delhi.
2. The Chairman,
   Deccan Development Society,
   Office at A 6 Meera Appts,
   Basherbagh, Hyderabad.
3. The Principal,
   Krishi Vigyan Kendra,
   Post Box No.213, Zaheerabad. .....Respondents

APPEARANCES:

For the Petitioner : M/s.T Sharath & G.N. Raju, Advocates

For the Respondents : M/s.N.R. Devaraj & W. Satyanarayana, Advocates for R1

M/s. B. Nalin Kumar, K.S. Rahul, M.S. Chandresh & K. Aravind Goud, Advocates for R2 & R3

AWARD

This petition under Sec. 2 A (2) of the LD. Act, 1947 has been filed by Sri Md. Mahaboob challenging his termination against the Management of the Indian Counsel of Agricultural Research and Krishi Vigyan Kendra. The Petitioner filed this petition seeking for setting aside the order of termination and to direct the Respondents to reinstate the Petitioner with full back wages, continuity of service and other attendant benefits.

2. The averments made the petition in brief are as follows:

Respondents one and two have common objects to promote and accelerate the process of education and training in the field of agriculture and to achieve these common objects they entered into a Memorandum of Understanding dated 19.7.1991 detiding to pool funds sent with man power and equipment. For the purpose of achieving these objectives Respondent first established the third Respondent at various districts in the state of A. P. Second Respondent recruited about 22 staff in various fields in different years commencing from 1994. 2nd Respondent recruited the Petitioner as Driver on 1.4.1997 for placing with the third Respondent at Medak district. Ever since the appointment Petitioner has been discharging his duties to the satisfaction of the Respondents. In his letter of appointment it is stated that the appointment was temporary and till the continuation of the project and that it is liable to be terminated without assigning any reason. On 2.9.97 first Respondent addressed letter to all the Kendras regarding the funding, norms of building infrastructures and staffing pattern. It is stated in the said letter that revised staff strength of 16 will be applicable for KVKs when the existing staff in the KVK are adjusted/ redeployed within the over all institutes system or they are transferred or promoted or retired. The staff already adjusted should be treated as final. The position so vacated because of transfer promotion or retirement shall not be filled up in case these are exceeding revised strength of 16. Till such time the host institute make adjustment through redeployment or promotion or retirement, the existing staff shall continue to work in the KVK. For filling up of any vacant post prior approval of the council will have to be obtained" after receiving the said letter of the first Respondent without even assigning any reason 2nd Respondent issued letter of termination dated 25.9.97 to the Petitioner and others terminating their services on the ground that the main cut in funding is related to staff positions. First Respondent has specifically stated in the letter dated 2.9.97 that the existing staff shall continue to

work for KVK *i.e.*, third Respondent. First Respondent has approved the appointment of the Petitioner. Thus, under no circumstances 2nd Respondent can not terminate the services of the Petitioner on the ground of financial problems. Further, the persons who are appointed subsequent to the Petitioner has been left in die service. Absolutely, there is no basis for terminating the services of the Petitioner over looking the years of his service put in by him in the organisation. Petitioner questioned the said letter of termination by way of WP No.7588 of 1998 and the Hon'ble High Court of A.P. permitted the Petitioner to discharge his duties. Pending interim orders Petitioner was denied to discharge the duties pursuant to the interim order passed in WPMP No.43754/1998 in WP No. 35510/1998. Since the third Respondent failed to comply with the interim order Petitioner filed contempt petition, since the Respondent raised the question of maintainability of writ petition on the ground that Respondent No. 3 does not fall under article 12 of Constitution of India Petitioner has withdrawn the writ petition on 23.12.2004 with leave of the Hon'ble High Court of A.P. to institute appropriate proceeding before this tribunal. Third Respondent who pleads on one hand that there are no funds and hence, services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments, on the other hand. It is not the case of the Respondent that the project has come to an end. They are went upon to terminate the services of the Petitioner. All India KVK Employees Union filed WP No. 126/98 before Hobble Supreme Court of India, seeking for regularisation of their services in all Kendras of India. While disposing off the said writ petition Supreme Court held that even according to the affidavit filed by the first Respondent and letter dated 24.6.98 the grievance of the writ petitioners does not survive. In their counter first Respondent stated that the services of all employees are protected. Thus, Petitioner cannot be terminated and the action of the third Respondent is illegal and violative of principles of natural justice and the same is liable to be set aside. For no fault of his, Petitioner is victimized and the practice of the third Respondent is unfair.

3. First Respondent filed his counter with the averments in brief as follows:

First Respondent has nothing to do with the engagement or employment to the Petitioner made by the 2nd Respondent. Petitioner and others are neither employed nor employable nor retrenched by the first Respondent. This is solely in the domain of 2nd Respondent and 2nd Respondent alone is responsible. The number and the trades of the members of staff are purely based on their requirements and utility. The services of Petitioner and five others were terminated by 2nd Respondent on the ground that strength of the staff of R3 has been reduced to 22 to 16. Only the services of junior most persons were terminated as they were engaged on purely temporary basis and are liable to be terminated at any time without any further notice. Petitioner is one of the junior most person whose services were terminated. The activities taken up in the given scheme are social welfare activities for the upliftment of workmen and helping the poor and downtrodden in the society by implementing various schemes In the said process personnel engaged in one scheme will be shifted to another and redeployment also will be there according to the requirement. As per the circumstances warrant Rl prescribes the number of persons to be engaged which either increases or decreases according it its requirements or necessity leaving it to the discretion of 2nd Respondent and the 2nd Respondent arranges the required number of staff. If there is no need the 2nd Respondent may terminate the services of the employees. RII is not liable for any such activities of 2nd Respondent. Thus, first Respondent is not a necessary party and no relief can be sought for against him. Its misjoinder of parties as far as Rl is concealed. Rl is not an industiy as defined u/s2(j) of Industrial Disputes Act, 1947. Further Rl is under the control of Central Government and comes under the definition of "State" under Article 12 of the Constitution. All the service rules and conditionality of services in FRSR and CCS & CCA Rules are applicable to the employees of Rl. As per the principle laid down in the case of Rajendra Vs. State of Rajasthan (1999) (2) SCC 317, when the post temporarily created for fulfilling the needs of a particular project or scheme limited in its duration, comes to an end on account of the need for the project was fulfilled or had to be abandoned wholly or partially for want of funds, employer cannot be compelled to continue employing such employees. The petition is liable to be dismissed.

3. 2nd and 3rd Respondents filed their counter with the averments in brief as follows:

2nd Respondent is a charitable institution working in the interest of rural poor. By developing them economically, socially and educationally by extending all support needed by them. It's a non-profit organisation which functions with the funds released by national and international donors and also adopting by nodal schemes of the state and central governments. They are not an industry within the meaning of the ID Act. Hence, petition is not maintainable. Respondents only assist the rural poor by educating them and by imparting techniques which are not activities of industry under this act. 2nd Respondent is a registered rural development organisation. First Respondent has the responsibility for agricultural research education and for extension of education in the country and established Krishi Vigyan Kendras/ trainee training centres in the districts with the object of promoting and accelerating the progress of education and training in the field of agriculture and allied areas under the scheme known as KVK/TVT on individual projects. Each project is entrusted to an implementing agency selecting a suitable

organisation in the district. For the district of Medak ICAR has considered the 2nd Respondent as an implementing agency. They entered into a memorandum of understanding whereunder first Respondent has agreed to provide grant for the project according to the pattern of assistance approved under TTC/KVK subject to personal and budgetary limitations imposed by the Government of India from time to time. The administrative control over the staff employed under the scheme shall rest with the 2nd Respondent. Petitioner was appointed for the third Respondent as Driver on adhoc basis and his appointment was subject to termination at any time. His salary was paid from out of the funds provided by the first Respondent. His appointment was liable for termination without assigning any reason and without notice. While so, first Respondent issued letter dated 26.5.97 on funding patterns, norms of building infrastructures and staff in KVKs and also fixing staff pattern of each KVK comprising 16 courses. Further, 1st Respondent issued letter dated 2.9.97 stating that all KVKs which have not completed five years from the year of sanction will be provided 100% grants till they complete five years. Thereafter, all these KVKs will be funded by the 1st Respondent and implementing agency for a period of 5 years. On completion of 10 years the funding pattern would be 50:50 percent by the first Respondent and hosting institute and it is further stated that all KVKs irrespective of their existence will be funded on 100% basis during the year 1997-98, In view of the drastic change in the funding process and second Respondent being a non-governmental organisation entirely dependent upon donor funds, is not in a position to continue the staff excess of 16. Thus, in exercise of power conferred in the above mentioned letters 2nd Respondent issued letter dated 25.9.97 informing the Petitioners and others that their services will not be required from 1.4.1998. Suppressing material facts, Petitioner and others filed WP 7588 of 1998 and obtained exparte interim orders. Respondents filed counter affidavits and thereafter, the said petition was dismissed for default. After waiting for a reasonable period Respondents addressed letter dated 2.9.98 discontinuing the services of the Petitioner and others by bringing the original termination orders into force. Thereupon Petitioner and others filed a petition to restore WP 7588 of 1998. Respondents filed their counter affidavit mentioning the factum of termination. After hearing boih parties Hon'ble High Court of A.P. restored WP No. 7588 of 1998 but, without reviving the exparte interim order. Ultimately the said writ petition was dismissed by order dated 10.2.99 with a finding that, Petitioners can not seek relief under article 226 of Constitution of India. Petitioners filed WPNo.35510 of 1998 challenging ihe letter dated 2.9.98 and also Contempt Case No.872 of 1998 but ultimately they were all withdrawn. Since it is not an "Industry" as defined in Sec.2(j) of Industrial Disputes Act, 1947, the question of Petitioner falling within the meaning of workman as defined in Sec.2 (S) does not arise. Therefore. Sec.25 (F) 25(G) and 25 (H) of the said act are not applicable to the facts and circumstances of this case. It is only a charitable institution and does not fall within the meaning of industry. The termination of the Petitioner would not amount to retrenchment under Sec.2(oo) (bb) of the Industrial Disputes Act, 1947. The contention of the Petitioner that 2nd Respondent issued letter of termination dated 25.9.97 without giving any reason on the ground of main cut in funding relating to staff positions and that in the letter dated 2.9.97 1st Respondent specifically stated that existing staff shall continue to work, are all not correct. Harmonious reading of said letter would reveal that 2nd Respondent is given liberty to reduce the staff strength to 16. 2nd Respondent reserved the power to terminate the services of the Petitioner without notice and without assigning reasons, while giving appointment order. The contention of the Petitioner that the employees who have been appointed in the year 1997 are left in the service, and that there is no basis for removal of the Petitioner overlooking his service are all incorrect. Petitioner was terminated due to change in funding pattern by funding institutions. Whereas paper advertisement dated 23-29 March, 2002 was not the post held by the Petitioner, it relates to different post for which Petitioner is not qualified. The contention that first Respondent filed his counter in WP No. 126 of 1998 before Hon'ble Supreme Court of India stating that services of all employees is protected is not correct. The said proceeding has no bearing on these Respondents. Petitioner is not entitled for the relief sought for. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Ex.Wl to W8 were marked. On behalf of Respondents MW1 and MW2 were examined and exhibits Ex.Ml to M3 are marked.

5. Heard the arguments of either party. Written arguments were filed by Respondent and the same were considered.

6. The points that arise for determination are:

I. Whether activities of Respondents comes under the purview of definition of industry and whether Petitioner is a workman?

II. Whether the orders passed by the 2nd Respondent terminating the services of the Petitioner is liable to be set aside? If so, on what grounds?

III. To what relief Petitioner is entitled to?

7. Point No. (I):

It is the contention of the Petitioner that he is a workman under Sec. 2(s) of the Industrial Disputes Act, 1947 and the activities of the Respondents amounts to industry, under Sec. 2 (j) of the Industrial Disputes Act, 1947. Sec. 2(j) of the said act read as follows:

Industry means any business, trade, undertaking, manufacture or calling of employees and includes any calling service, employment, handicraft or industrial occupation or avocation of workman."

Whereas, Sec. 2(s) reads as follows:

'Workman' means any person (including an apprentice) employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or Implied, and for ihe purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, or

(ii) who is employed in the police service or as an officer or other- employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity: or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand fix hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

8. Now, it is to be verified whether the activities of the Respondents attract the ingredients of the term industry, cited above. Admittedly, the activities of the Respondents are carrying out agricultural research, veterinary matters, raising agricultural productions etc., and rendering assistance to rural poor to develop economically, socially and educationally with the help of the funds donated by donors or the government, as per the schemes and objectives for which purpose the funds are released.

9. It is the contention of the Respondents that their activities do not generate any profits, and on the other hand they are philanthropical activities and thus, they do not fall under the category of industry. It is not the contention of the Petitioner that Respondents are earning any profit through their activities. Now, it is to be verified whether the above mentioned activities of the Respondents do fall under category of industry. As per the definition of industry given under Sec 2(j) of the Industrial Disputes Act, 1947, any service also will come under the purview of the said definition,

10. Learned Counsel for the Respondents 2 and 3 relied upon the principles laid down in the case of Physical Research Laboratory Vs. KG Sarma (1997) 4 SCC page 257, whereunder, a Division Bench of Hon'ble Supreme Court of India has distinguished the principles laid down in the case of the Bangalore Water Supply and Sewerage Board vs. A. Rajappa, [(1978) 2 SCC 213] and held that "while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principle "noscitur a sociis was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Further more, an activity undertaken by government cannot be regarded as an industry if it is done in discharging sovereign functions."

11. Whereas Learned Counsel for the Petitioner relied upon the principles laid down by the Apex Court in the case of JK Cotton Spinning and Weaving Mills Co Limited Vs. Labour Appellate Tribunal of India IIIrd Branch, Lucknow l964-AIR(SC)-0-737/1964-SCR-3-724 and in the case of Mahila Samiti, Tikamgarh and State of Madhya Pradesh and Ors. 1993 III LLJ page 46, in support of his contention that the principles laid down in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 and Satynarayana Sharma and Qrs. Vs. National Mineral Development Corporation Ltd. and Ors. 1993 III LLJ, 472 still hold the field.

12. In the case of Nehru Yuva Kendra Sangathan Vs. Union of India, the Hon'ble High Court of Delhi considered the principles laid down in various cases including the case of Physical Laboratory (relied upon by the respondents). Considering the legal situation thai in the case of Coir Board Vs. Indira Devi 1988 III SCC 259, the Hon'ble Supreme Court of India had decided to refer the decision in Bangalore Water Supply case for reconsideration by a larger Bench but subsequently three judges Bench of the Hon'ble Supreme Court of India held by its order dated 10.11.1998 in Coir Board case that Bangalore Water Supply Case does not require any reconsideration, Hon'ble Delhi High Court had categorically held in the case of Nehru Yuva Kendra Sangathan Vs. Union of India after discussing various legal precedents, that obviously Bangalore Water Supply case which is a seven Judge Bench judgement rendered by the Apex Court still holds the field. Further Hon'ble Delhi High Court referred to the case of General Manager Telecom vs. S. Srinivasa Rao 1997 SCC 767, whereunder also it was held by three Judges Bench of the Apex Court that the Bangalore Water Supply case holds the field and it is binding precedent.

13. It is not the case of the respondents that any larger bench of the Apex Court was formulated for reconsidering the principles laid down by the even judges Bench of Apex Court in Bangalore Water Supply case. Thus, it is very much clear that the said judgement continues to be a binding legal precedent.

14. In the Bangalore Water Supply case, it is held that "absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or

other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relation."

15. In the circumstances, just because the activities of the respondents do not generate any profit and they are philanthropic in nature, it will not change the fact that the said activities come under the purview of the definition of industry since the decisive test is the nature of the activity with special emphasis of employer and employee relationship. The nature of the activity in this case is, a systematic activity organized with cooperation between employer and employees for rendering services calculated to satisfy human wants and wishes i.e., improving the production of agricultural products and also developing the rural poor, socially economically and educationally etc. Thus, the activities of the Respondents attract the ingredients of the definition of 'Industry' as provided under Sec. 2(j) of Industrial Disputes Act, 1947 and thus, it is an 'Industry'.

16. Consequentially, the persons who work for the Respondents will certainly come under the purview of the definition of the workman given under Sec. 2(S) of the Industrial Disputes Act, 1947, since, as already cited above, Sec. 2(s) of the said Act, provides that any person employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire oi reward is a workman. Thus, Petitioner who has been appointed as Driver by 2nd Respondent and has been deputed to work so with the 3rd Respondent will certainly come under the purview of the definition of the workman referred to above. In the case of Mahila Samithi, Thimkkamgarh Vs. State of M.R. 1993 III LLJ page 468 relied upon by the counsel for the Petitioner it is held to the effect that the employees of the Mahila Samithi which is engaged in systematic activities of promoting training women in family planning programme etc. which is an industry, will certainly come under the purview of the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947. This principle is a guiding principle to arrive at the conclusion that the Petitioner is a workman.

17. Thus, it can safely be held that the activities of the respondents come under the purview of the industry as defined under Sec. 2(j) of Industrial Disputes Act, 1947 and Petitioner comes under the definition of the workman under Sec. 2(s) of the Industrial Disputes Act, 1947.

This point is answered accordingly.

18. Point No. II:

It is an undisputed fact that Petitioner who has been working as Tractor Driver since 1.4.1997 with the 3 Respondent, being appointed to the said post by the 2nd Respondent by virtue of the order dated 17.4.1997 has been terminated from services by the 2nd Respondent w.e.f. 1.4.1998 by virtue of Ex.W4 the letter dated 25.9.1997. The reason tor termination of services of the Petitioner have been given in Ex.W4 as that first Respondent has changed its guidelines and have provided a reduced budget to voluntary organisation to run their KVKs that the main cut in funding is related to staff positions and in spite of their best efforts 2nd Respondent could only get a grace period of some months and as the cut becomes effective from 1.4.1998, the services of Petitioner were terminated with effect from the said date.

19. Petitioner is questioning the reasonableness of termination of his services in that manner and claiming that 2nd Respondent can not terminate services of the Petitioner on the ground of financial problems and that further persons who are appointed subsequent to the Petitioner have been left in service and thus, there is discrimination. It is further claimed by the Petitioner that 3rd Respondent who pleads on one hand that as there are no funds the services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments on the other hand and that as per the terms of his appointment Petitioner is entitled to be continued in service until the project comes to an end.

20. Whereas it is the claim of the Respondents that Petitioner is one of the juniormost persons and therefore his services were terminated, as there was need for retrenchment. It is the further contention of the Respondents that Petitioner was appointed on adhoc basis and his appoitniment was subject to termination at any time without assigning any reason and without notice and further that in view of the drastic change brought out in funding process by the 1st Respondent, 2nd Respondent was constrained to terminate the services of the Petitioner. The 2nd Respondent is further denying the truth of the contention of the Petitioner that the employees employed subsequent to him are still left in service and that paper advertisement dated 23-29 March, 2002 does not relate to the post of Petitioner.

21. Thus, it is to be verified that any person who was appointed subsequent to the Petitioner have been left in service, while terminating the services of the Petitioner and if so it is a justified action. The other point to be decided is whether the Respondents who have terminated the services of the Petitioner claiming that for want of funds they can not continue him in service are justified in making new appointments in March, 2002. The third aspect to be decided is whether Respondents can terminate the services of the Petitioner without notice and without assigning reasons and also without paying compensation.

22. As to the first point mentioned above, is concerned, Ex.W8 is the details of the staff working in the given KVK as on February, 1998 produced before the court by the Petitioner. This document has been marked with the consent of the Respondent on 12.7.2006. That means the correctness of this document is admitted by the

Respondents. As can be seen from this document Petitioner has been appointed on 1.4.1997 whereas, one Kasyap training assistant has been appointed on 31.3.1997. There are several other employees who were appointed in the years 1995 and 1996 also. Thus, cannot be termed that Petitioner is the juniormost employee of the Respondents. As can been seen from Ex. W4, the reason given for termination of the services of the Petitioner is that as the cut in funding is relating to staff positions Petitioner's services were terminated and it is the claim of the Respondents that as Petitioner is one of the juniormost employees his services were terminated due to cut in the funding. But the fact appears to be otherwise, as per the discussions held above, in the light of the contents of Ex.W8. There are several other employees who are juniors to the Petitioner when the dates of appointment of these persons are considered, are still continuing in the service. It is not the claim of the Respondents that considering the nature of the work being done by the various workmen and its importance to the organisation, they have chosen to retain some and terminate the others. It is their categorical contention that as the Petitioner was one of the junior most employees his services were terminated, which is not a correct statement. Therefore, the contention of the Petitioner that the persons who are appointed subsequent to him were left out in service and his services were terminated by the Respondents, is to be accepted as a correct contention. It amounts to discrimination which shall never be allowed. It is the principle that the last come first go. So the action of the Respondents in this regard is not justifiable.

23. As to the second aspect to be considered is concerned certainly, the Respondents are not justified in recruiting new persons when they terminated the services of the Petitioner on the ground of non-availability of sufficient funds. It is the contention of the Respondents that the vacancies advertised by virtue of Ex. W7 advertisement are different posts to the post held by the Petitioner, that Petitioner got on qualifications to hold any such posts and therefore, they cannot be find fault with for making new appointments.

24. But the fact remains that Petitioner who was in the service of Respondents was removed from service only on the ground that funds were not available. If funds were not available no fresh appointments can be made. The grievance of the Petitioner is that Respondents are making new appointments. It is a fact that new appointments were made. Then there is no justification, in terminating the services of the Petitioner.

25. As to the third aspect is concerned, just because it is mentioned in the appointment order that without notice Petitioner's services can be terminated Respondents can not do as such since, the provisions of Sec. 25(F) of the Industrial Disputes Act, 1947 provides for one month's notice, and payment of retrenchment compensation to the workmen who is retrenched. Thus, irrespective of the contents of the appointment order given to the Petitioner who is a workman, Respondents are liable to give one month notice. In this case, sufficient notice has been given to the Petitioner, but evidently no retrenchment compensation has been given to him. On this ground also Ex.W4 order is not a maintenance order.

26. In view of the foregone discussion of the material on record it can safely be held that Ex.W4 the order passed by the 2nd Respondent terminating the services of the Petitioner is not maintainable and is liable to be set aside.

This point is answered accordingly,

27. Point No. III: In view of the findings arrived at above, Ex.W4 order is liable to be set aside and Petitioner is entitled for reinstatement into service. Considering the fact that the Petitioner has approached the court belatedly, *i.e.*, about 7 years after his removal from service, he is not entitled for any back wages, but he is entitled for continuity of service and other attendant benefits.

This point is answered accordingly.

28. Result:—

In the result, Petition is allowed, Tlie impugned order dated 25.9.97 issued by the 2nd Respondent is hereby set aside. Petitioner shall be reinstated into service forthwith. He is entitled for continuity of service and other attendant benefits except back wages.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesscs examined for the Petitioner	Witnesses examined for the Respondent
WW 1: Sri K. Mahaboob	MW1: Sri K. Srinivasa Rao MW2: Sri A. Giridhar

Documents marked for the Petitioner

Ex. W1: Photostat copy of Memorandum of Uderstanding dt. 19.7.1991

Ex. W2: Photostat copy of Ir. No. 1(1)/96-AE-1 dt. 2.9.1997

Ex. W3: Photostat copy of appointment Ir. dt. 24.6.1994

Ex. W4: Photostat copy of Ir. dt. 25.9.1997

Ex. W5: Photostat copy of order in WP Nos. 7588/1998 & 35510/1998

Ex. W6: Photostat copy of order of Hon'ble Supreme Court dt. 24.8.1998

Ex. W7: Photostat copy of employment newspaper cutting dt. 23-29 March, 2002

Ex. W8: Photostat copy of statement showing working staff in KVK, Zaheerabad as on February, 1998

Documents marked for the Respondents

Ex. M1: Attested copy of Memorandum of Understanding between the Indian Council of Agricultural Research, Krishi Bhawan, New Delhi and the Deccan Krishi Vigyana Kendra dt. 19.7.1991

Ex.M2: Photostat copy of lr. No. 1(1)/96-AE-1 dt. 26.5.1997

Ex. M3: Photostat copy of lr. No. 1(1)/96-AE-1 dt. 2.9.1997

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी जनरल मेनेजर इंडियन कौंसिल ऑफ एग्रीकल्चरल रिसर्च एंड अदर्स, हैदराबाद के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 107/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2014-आईआर(डी यू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 107/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy Director General, The Indian Council of Agricultural Research and Others, Hyderabad and their workman, which was received by the Central Government on 10/01/2014.

[No. L-42012/3/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C. No. 107/2005

Between:

Sri Md. Jani Miya,
S/o Shafrudin,
C/o 2-2-198, Subhasgunj Mear MPP Office,
Zaheerabad .....Petitioner

AND

1. The Deputy Director General,
   The Indian Counsel of Agricultural Research,
   Krishi Bhavan, New Delhi.

2. The Chairman,
   Deccan Development Society,
   Office at A 6 Meera Appts,
   Basheerbagh, Hyderabad.

3. The Principal,
   Krishi Vigyan Kendra,
   Post Box No. 213, Zaheerabad.

.....Respondents

Appearances:

For the Petitioner : M/s. T. Sharath & G.N. Raju, Advocates

For the Respondents : M/s. N.R. Devaraj & W. Satyanarayana, Advocates for R1

M/s. B. Nalin Kumar, K.S. Rahul, M.S. Chandresh & K. Aravind Goud, Advocates for R2 & R3

AWARD

This petition under Sec. 2 A(2) of the I.D. Act, 1947 has been filed by Sri Md. Jani Miya challenging his termination against the Management of the Indian Counsel of Agricultural Research and Krishi Vigyan Kendra. The Petitioner filed this petition seeking for setting aside the order of termination and to direct the Respondents to reinstate the Petitioner with full back wages, continuity of service and other attendant benefits.

2. The averments made in the petition in brief are as follows:

Respondents one and two have common objects to promote and accelerate the process of education and training in the field of agriculture and to achieve these common objects they entered into a Memorandum of Understanding dated 19.7.1991 deciding to pool funds sent with man power and equipment. For the purpose of achieving these objectives Respondent first established the third Respondent at various districts in the state of A.P. Second Respondent recruited about 22 staff in various fields in different years commencing from 1994. 2nd Respondent recruited the Petitioner as Driver on 1.4.1997 for placing with the third Respondent at Medak district. Ever since the appointment Petitioner has been discharging his duties to the satisfaction of the Respondents. In his

letter of appointment it is stated that the appointment was temporary and till the continuation of the project and that it is liable to be terminated without assigning any reason. On 2.9.97 first Respondent addressed letter to all the Kendras regarding the funding, norms of building infrastructures and staffing pattern. It is stated in the said letter that revised staff strength of 16 will be applicable for KVKs when the existing staff in the KVK are adjusted/ redeployed within the over all institutes system or they are transferred or promoted or retired. The staff already adjusted should be treated as final. The position so vacated because of transfer promotion or retirement shall not be filled up in case these are exceeding revised strength of 16. Till such time the host institute make adjustment through redeployment or promotion or retirement, the existing staff shall continue to work in the KVK. For filling up of any vacant post prior approval of the council will have to be obtained" after receiving the said letter of the first Respondent without even assigning any reason 2nd Respondent issued letter of termination dated 25.9.97 to the Petitioner and other terminating their services on the ground that the main cut in funding is related to staff positions. First Respondent has specifally stated in the letter dated 2.9.97 that the existing staff shall coutinue to work for KVK i.e., third Respondent. First Respondent has approved the appointment of the Petitioner. Thus, under no circumstances 2nd Respondent can not terminate the services of the Petitioner on the ground of financial problems. Further, the persons who are appointed subsequent to the Petitioner has been left in the service. Absolutely, there is no basis for terminating the services of the Petitioner over looking the years of his service put in by him in the organisation. Petitioner questioned the said letter of termination by way of WP No. 7588 of 1998 and the Hon'ble High Court of A.P. permitted the Petitioner to discharge his duties. Pending interim orders Petitioner was denied to discharge the duties pursuant to the interim order passed in WPMP No. 43754/1998 in WP No. 35510/1998. Since the third Respondent failed to comply with the interim order Petitioner filed contempt petition, since the Respondent raised the question of maintainability of writ petition on the ground that Respondent No. 3 does not fall under article 12 of Constitution of India Petitioner has withdrawn the writ petition on 23.1.2004 with leave of the Hon'ble High Court of A.P. to institute appropriate proceeding before this tribunal. Third Respondent who pleads on one hand that there are no funds and hence, services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments, on the other hand. It is not the case of the Respondents that the project has come to an end. They went upon to terminate the services of the Petitioner. All India KVK Employees Union filed WP No. 126/98 before Hon'ble Supreme Court of India, seeking for regularisation of their services in all Kendras of India. While disposing off the said writ petition supreme court held that even according to the affidavit filed by the first Respondent and letter dated 24.6.98 the grievance of the writ petitioners does not survive. In their counter first Respondent stated that the services of all employees are protected. Thus, Petitioner can not be terminated and the action of the third Respondent is illegal and violative of principles of natural justice and the same is liable to be set aside. For no fault of his, Petitioner is victimized and the practice of the third Respondent is unfair.

3. First Respondent filed his counter with the averments in brief as follows:

First Respondent has nothing to do with the engagement or employment to the Petitioner made by the 2nd Respondent. Petitioner and others are neither employed nor employable nor retrenched by the first Respondent. This is solely in the domain of 2nd Respondent and 2nd Respondent alone is responsible. The number and the trades of the members of staff are purely based on their requirements and utility. The services of Petitioner and five others were terminated by 2nd Respondent on the ground that strenght of the staff of R3 has been reduced to 22 to 16. Only the services of junior most persons were terminated as they were engaged on purely temporary basis and are liable to be terminated at any time without any further notice. Petitioner is one of the junior most person whose services were terminated. The activities taken up in the given scheme are social welfare activities for the upliftment of workmen and helping the poor and downtrodden in the society by implementing various schemes. In the said process personnel engaged in one scheme will be shifted to another and redeployment also will be there according to the requirement. As per the circumstances warrant R1 prescribes the number of persons to be engaged which either increases or decreases according it its requirements or necessity leaving it to the discretion of 2nd Respondent and the 2nd Respondent arranges the required number of staff. If there is no need the 2nd Respondent may terminate the services of the employees. R1 is not liable for any such activities of 2nd Respondent. Thus, first Respondent is not a necessary party and no relief can be sought for against him. Its misjoinder of parties as far as R1 is concerned. R1 is not an industry as defined u/s 2(j) of Industrial Disputes Act, 1947. Further, R1 is under the control of Central Government and comes under the definition of "State under Article 12 of the Constitution. All the service rules and conditionality of services in FRSR and CCS & CCA Rules are applicable to the employees of R1. As per the principle laid down in the case of Rajendra Vs. State of Rajasthan [(1999)(2) SCC 317], when the post temporarily created for fulfilling the needs of a particular project or scheme limited in its duration, comes to an end on account of the need for the project was fulfilled or had to be abandoned wholly or partially for want of funds, employer can not be compelled to continue

employing such employees. The petition is liable to be dismissed.

4. 2nd and 3rd Respondents filed their counter with the averments in brief as follows:

2nd Respondent is a charitable institution working in the interest of rural poor. By developing them economically, socially and educationally by extending all support needed by them. It's a non-profit organisation which functions with the funds released by national and international donors and also adopting by nodal schemes of the state and central governments. They are not an industry within the meaning of the ID act. Hence, petition is not maintainable. Respondents only assist the rural poor by educating them and by imparting techniques which are not activities of industry under this act. 2nd Respondent is a registered rural development organisation. First Respondent has the responsibility for agricultural research education and for extension of education in the country and established Krishi Vigyan Kendras/Trainee Training Centres in the districts with the object of promoting and accelerating the progress of education and training in the field of agriculture and allied areas under the scheme known as KVK/TTC on individual projects. Each project is entrusted to an implementing agency selecting a suitable organisation in the district. For the district of Medak ICAR has considered the 2nd Respondent as an implementing agency. They entered into a memorandum of understanding whereunder first Respondent has agreed to provide grant for the project according to the pattern of assistance approved under TTC/KVK subject to personal and budgetary limitation imposed by the Government of India from time to time. The aministrative control over the staff employed under the scheme shall rest with the 2nd Respondent. Petitioner was appointed for the third Respondent as watchman on 19.4.1994 on adhoc basis and his appointment was subject to termination at any time his salary was paid from out of the funds provided by the first Respondent. His appointment was liable for termination without assigning any reason and without notice. While so, first Respondent issued letter dated 26.5.97 on funding patterns, norms of building infrastructures and staff in KVKs and also fixing staff pattern of each KVK comprising 16 courses. Further, 1st Respondent issued letter dated 2.9.97 stating that all KVKs which have not completed five years from the year of sanction will be provided 100% grants till they complete five years. Thereafter, all these KVKs will be funded by the 1st Respondent and implementing agency for a period of 5 years. On completion of 10 years the funding pattern would be 50:50 percent by the first Respondent and hosting institute and it is further stated that all KVKs irrespective of their existence will be funded on 100% basis during the year 1997-98. In view of the drastic change in the funding process and second Respondent being a non-governmental ogranisation entirely dependent upon donor funds, is not in a position to continue the staff excess of 16. Thus, in exercise of power conferred in the above mention letters 2nd Respondent issued letter dated 25.9.97 informing the Petitioners and others that their services will not be required from 1.4.1998. Suppressing material facts, Petitioner and others filed WP 7588 of 1998 and obtained exparte interim orders. Respondents filed counter affidavits and thereafter, the said petition was dismissed for default. After waiting for a reasonable period Respondents addressed letter dated 2.9.98 discontinuing the services of the Petitioner and others by bringing the original termination orders into force. Thereupon Petitioner and others filed a petition to restore WP 7588 of 1998. Resondents filed their counter affidavit mentioning the factum of termination. After hearing both parties Hon'ble High Court of A.P. restored WP No. 7588 of 1998 but, without reviving the exparte interim order. Ultimately the said write petition was dismissed by order dated 10.2.99 with a finding that, Petitioners can not seek relief under article 226 of Constitution of India. Petitioners filed WP No. 35510 of 1998 challenging the letter dated 2.9.98 and also Contempt Case No. 872 of 1998 but ultimately they were all withdrawn. Since it is not an "Industry" as defined in Sec. 2(j) of Industrial Disputes Act, 1947, the question of Petitioner falling within the meaning of workman as defined in Sec. 2(S) does not arise. Therefore, Sec. 25(F) 25 (G) and 25 (H) of the said act are not applicable to the facts and circumstances of this case. It is only a charitable institution and does not fall within the meaning of industry. The termination of the Petitioner would not amount to retrenchement under Sec. 2(oo) (bb) of the Industrial Disputes Act, 1947. The contention of the Petitioner that 2nd Respondent issued letter of termination dated 25.9.97 without giving any reason on the ground of main cut in funding relating to staff positions and that in the letter dated 2.9.97 1st Respondent specifically stated that existing staff shall continue to work, are all not correct. Harmonious reading of said letter would reveal that 2nd Respondent is given liberty to reduce the staff strength to 16. 2nd Respondent reserved the power to terminate the services of the Petitioner without notice and without assigning reasons, while giving appointment order. The contention of the Petitioner that the employees who have been appointed in the year 1997 are left in the service, and that there is no basis for removal of the Petitioner overlooking his service are all incorrect. Petitioner was terminated due to change in funding pattern by funding institutions. Whereas paper advertisement dated 23-29 March, 2002 was not the post held by the Petitioner, it relates to different post for which Petitioner is not qualified. The contention that first Respondent filed his counter in WP No. 126 of 1998 before Hon'ble Supreme Court of India stating that services of all employees is protected is not correct. The said proceedings has no bearing on these Respondents. Petitioner is not entitled for the relief sought for. Petition is liable to be dismissed.

5. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Ex. W1 to W8 were marked. On behalf of Respondents MW1 and MW2 were examined and exhibits Ex. M1 to M4 are marked.

6. Heard the arguments of either party. Written arguments were filed by Respondent and the same were considered.

7. The points that arise for determination are:

I. Whether activities of Respondents comes under the purview of definition of industry and whether Petitioner is a workman?

II. Whether the orders passed by the 2nd Respondent terminating the services of the Petitioner is liable to be set aside? If so, on what grounds?

III. To what relief Petitioner is entitled to?

8. Point No. (I):

It is the contention of the Petitioner that he is a workman under Sec. 2(s) of the Industrial Disputes Act, 1947 and the activities of the Respondents amounts to industry, under Sec. 2(j) of the Industrial Disputes Act, 1947. Sec. 2(j) of the said act read as follows:

Industry means any business, trade, undertaking, manufacture of calling of employees and includes any calling service, employment, handicraft or industrial occupation or avocation of workman."

Whereas, Sec. 2(s) reads as follows:

'Workman' means any person (including an apprentice) employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed. discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. Now, it is to be verified whether the activities of the Respondents attract the ingredients of the industry, cited above. Admittedly, the activities of the Respondents are carrying out agricultural research, veterinary matters, raising agricultural productions etc., and rendering assistance to rural poor to develop economically, socially and educationally with the help of the funds donated by donors or the goverment, as per the schemes and objectives for which purpose the funds are released.

10. It is the contention of the Respondents that their activities do not generate any profits, and on the other hand they are philanthropical acitivies and thus, they do not fall under the category of industry. It is not the contention of the Petitioner that Respondents are earning any profit through their activities. Now, it is to be verified whther the above mentinoed activities of the Respondents do fall under category of industry. As per the definition of industry given under sec. 2(j) of the Industrial Disputes Act, 1947, any service also will come under the purview of the said definition.

11. Learned Counsel for the Respondents 2 and 3 relied upon the principles laid down in the case of Physical Research Laboratry Vs. KG Sarma (1997) 4 SCC page 257, whereunder, a Division Bench of Hon'ble Supreme Court of India has distinguished the principle laid down in the case of the Bangalore Water supply And Sewerage Board vs. A. Rajappa, [C1978) 2 SCC 213] and held that "while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principle "noscitur a socius was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Further more, an activity undertaken by government can not be regarded as an industry if it is done in discharging sovereign functions."

12. Whereas Learned Counsel for the Petitioner relied upon the principles laid down by the Apex Court in the case of JK Cotton Spinning and Weaving Mills Co Limited Vs. Labour Appellate Tribunal of India IIIRd Branch, Lucknow 1964-AIR(SC)-0-737/1964-SCR-3-724 and in the case of Mahila Samiti, Tikamgarh and State of Madhya Pradesh and Ors. 1993 III LLJ page 46, in support of his contention that the principles laid down in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 and Satynarayana Sharma and Ors. Vs. National Mineral Development Corporation Ltd. and Ors. 1993 III LLJ, 472 still hold the field.

13. In the case of Nehru Yuva Kendra Sangathan Vs. Union of India, the Hon'ble High Court of Delhi considered the principles laid down in various cases including the case of *Physical Laboratory* (relied upon by the respondents). Considering the legal situation that in the case of *Coir Board Vs. Indira Devi 1988 III SCC 259,* the Hon'ble Supreme Court of India had decided to refere the decision in Bangalore Water Supply case for

reconsideration by a larger Bench but subsequently three judges Bench of the Hon'ble Supreme Court of India held by its order dated 10.11.1998 in Coir Board case *that Bangalore Water Supply Case* does not require any reconsideration. Hon'ble Delhi High Court had categorically held in the case of Nehru Yuva Kendra Sangathan Vs. Union of India after discussing various legal precedents, that obviously Bangalore Water Supply case which is a seven Judge Bench judgment rendered by the Apex Court still holds the field. Further Hon'ble Delhi High Court referred to the case of General Manager Telecom vs. S. Srinivasa Rao 1997 SCC 767, whereunder also it was held by three Judges Bench of the Apex Court that the Bangalore Water Supply case holds the field and it is binding precedent.

14. It is not the case of the respondents that any larger bench of the Apex Court was formulated for reconsidering the principles laid down by the seven judges Bench of Apex Court in Bangalore Water Supply case. Thus, it is very much clear that the said judgment continues to be a binding legal precedent.

15. In the Bangalore Water Supply case, it is held that **"absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employees relation."**

16. In the circumstances, just because the activities of the respondents do not generate any profit and they are philanthropic in nature, it will not change the fact that the said activities come under the purview of the definition of industry since the decisive test is the nature of the activity with special emphasis of employer and employee relationship. The nature of the activity in this case is, a systematic activity organized with cooperation between employer and employees for rendering services calculated to satisfy human wants and wishes i.e., improving the production of agricultural products and also developing the rural poor, socially economically and educationally etc. Thus, the activities of the Respondents attract the ingredients of the definition of 'Industry' as provided under Sec. 2(i) of Industrial Disputes Act, 1947 and thus, it is an 'Industry'.

17. Consequentially, the persons who work for the Respondents will certainly come under the purview of the definition of the workman given under Sec. 2(S) of the Industrial Disputes Act, 1947, since, as already cited above, Sec. 2 (S) of the said Act, provides that any person employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward a workman. Thus, petitioner who has been appointed as Watchman by 2nd Respondent and has been deputed so with the 3rd Respondent will certainly come under the purview of the definition of the workman referred to above. In the case of Mahila Samithi, Thimkkamgarh Vs. State of M.P. 1993 III LLL page 468 relied upon by the counsel for the Petitioner it is held to the effect that the employees of the Mahila Samith i which is engaged in systematic activities of promoting training women in family planning programme etc., which is an industry, will certainly come under the purview of the definition of workman us 2(s) of the Industrial Disputes Act, 1947. This principle is a guiding principle to arrive at the conclusion that the Petitioner is a workman.

18. Thus, it can safely be held that the activities of the respondents come under the purview of the industry as defined under Sec. 2(j) of Industrial Disputes Act, 1947 and Petitioner comes under the definition of the workman under Sec. 2(s) of the Industrial Disputes Act, 1947.

This point is answered accordingly.

19. Point No. II:

It is an undisputed fact that Petitioner who has been working as Watchman since 1.5.1994 with the 3rd Respondent, being appointed to the said post by the 2nd Respondent by virtue of the order dated 19.4.1994 has been terminated from services by the 2nd Respondent w.e.f. 1.4.1998 by virtue of Ex. W4 the letter dated 25.9.1997. The reason for termination of services of the Petitioner have been given in EX. W4 as that first Respondent has changed its guidelines and have provided a reduced budget to voluntary organisation to run their KVks that the main cut in funding is related to staff positions and inspite of their best efforts 2nd Respondent could only get a grace period of some months and as the cut becomes effective from 1.4.1998, the services of Petitioner were terminated with effect from the said date.

20. Peitioner is questioning the reasonableness of termination of his services in that manner and claiming that 2nd Respondent can not terminate services of the Petitioner on the ground of financial problems and that further persons who are appointed subsequent to the Petitioner have been left in service and thus, there is discrimination. It is further claimed by the Petitioner that 3rd Respondent who pleads on one hand that as there are no funds the services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments on the other hand and that as per the terms of his appointment Petitioner is entitled to be continued in service until the project comes to an end.

21. Whereas it is the claim of the Respondents that Petitioner is one of the junior most persons and therefore his services were terminated, as there was need for retrenchment. It is the further contention of the Respondents that Petitioner was appointed on ad hoc basis and his appointment was subject to termination at any time without assigning any reason and without notice and

further that in view of the drastic change brought out in funding process by the 1st Respondent, 2nd Respondent was constrained to terminate the services of the Petitioner. The 2nd Respondent is further denying the truth of the contention of the Petitioner that the employees employed subsequent to him are still left in service and that paper advertisement dated 23-29 March, 2002 does not relate to the post of Petitioner.

22. Thus, it is to be verified that any person who was appointed subsequent to the Petitioner have been left in service, while terminating the services of the Petitioner and if so it is a justified action. The other point to be decided is whether the Respondents who have terminated the services of the Petitioner claiming that for want of funds they can not continue him in service are justified in making new appointment in March, 2002. The third aspect to be decided is whether Respondents can terminate the services of the Petitioner without notice and without assigning reasons and also without paying compensation.

23. As to the first point mentioned above, is concerned, Ex.W8 is the details of the staff working in the given KVK as on February, 1998 produced before the court by the Petitioner. This document has been marked with the consent of the Respondents on 12.7.2006. That means the correctness of this document is admitted by the Respondents. As can be seen from this document Petitioner has been appointed on 19.4.1994 whereas, one Kasyap training assistant has been appointed of 31.3.97. There as several other employees who were appointed in the years 1995 and 1996 also. Thus, it cannot be termed that Petitioner is the junior most employee of the Respondents. As can been seen from Ex.W4,, the reason given for termination of the services of the Petitioner is that as the cut in funding is relating to staff position Petitioner's services were terminated and it is the claim of the Respondents that as Petitioner is one of the juniormost employees his services were terminated due to cut in the funding. But the fact appears to be otherwise, as per the discussions held above, in the light of the contents of Ex.W8. There are several other employees who are juniors to the Petitioner when the dates of appointment of these persons are considered, are still continuing in the service. It is not the claim of the Respondents that considering the nature of the work being done by the various workmen and its importance to the organization, they have chosen to retain some and terminate the others. It is their categorical contention that as the Petitioner was one of the junior- most employees his services were terminated, which is not a correct statement. Therefore, the contention of the Petitioner that the persons who are appointed subsequent to him were left out in service and his services were terminated by the Respondents, is to be accepted as a correct contention. It amounts to discrimination which shall never be allowed. It is the principle that the last come first go. So the action of the Respondents in this regard is not justifiable.

24. As to the second aspect to be considered is concerned certainly, the Respondents are not justified in recruiting new persons when they terminated the services of the Petitioner on the ground of non-availability of sufficient funds. It is the contention of the Respondents that the vacancies advertised by virtue of Ex. W7 advertisement are different posts to the post held by the Petitioner, that Petitioner got no qualifications to hold any such posts and therefore, they cannot be find fault with for making new appointments.

25. But the fact remains that Petitioner who was in the service of Respondents was removed from service only on the ground that funds were not available. If funds were not available no fresh appointments can be made. The grievance of the Petitioner is that Respondents are making new appointments. It is fact that new appointments were made. Then there is no justification, in terminating the services of the Petition.

26. As to the third aspect is concerned, just because it is mentioned in the appointment order that without notice Petitioner's services can be terminated Respondents can not do as such since, the provisions of Sec. 25(F) of the Industrial Disputes Act, 1947 provides for one month's notice, and payment of retrenchment compensation to the workmen who is retrenched. Thus, irrespective of the contents of the appointment order given to the Petitioner who is a workman, Respondents are liable to give one month notice. In this case, sufficient notice has been given to the Petitioner, but evidently no retrenchment compensation has been given to him. On this ground also Ex.W4 order is not a maintenance order.

27. In view of the foregone discussion of the material on record it can safely be held that Ex.W4 the order passed by the 2nd Respondent terminating the services of the Petitoner is not maintainable and is liable to be set aside.

This point is answered accordingly.

28. **Point No. III:** In view of the findings arrived at above, Ex.W4 order is liable to be set aside and Petitioner is entitled for reinstatement into service. Considering the fact that the Petitioner has approached the court belatedly, i.e. about 7 years after his removal from service, he is not entitled for any back wages, but he is entitled for continuity of service and other attendant benefits.

This point is answered accordingly.

29. Result:

In the result, Petition is allowed. The impugned order dated 25.0.97 issued by the 2nd Respondent is hereby set aside. Petitioner shall be reinstated into service forthwith. He is entitled for continuity of service and other attendant benefits except back wages.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 19th day of July, 2013.

M.VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1L Shri Md. Jani Miya	MW1: Sri K. Srinivasa Rao MW2: Sri A. Giridhar

Documents marked for the Petitioner

Ex.W1: Photostate copy of Memorandum of Understanding dt. 19.7.1991

Ex.W2: Photostate copy of lr. No. 1(1)/96-AE-1 dt. 2.9.1997

Ex.W3: Photostate copy of appointment lr. dt. 19.4.1994

Ex.W4: Photostate copy of lr. dt. 25.9.1997

Ex.W5: Photostate copy of order in WP Nos. 7588/1998 & 35510/1998

Ex.W6: Photostate copy of order of Hon'ble Supreme Court dt. 24.8.1998

Ex.W7: Photostate copy of employment newspaper cutting dt 23—29 March, 2002

Ex.W8: Photostate copy of of statement showing working staff in KVK, Zaheerabad as on February, 1998

Documents marked for the Respondents

ExM1: Attested copy of Memorandum of Understanding between the Indian Council of Agricultural Research, Krishi Bhawan, New Delhi and the Deccan Krishi Vigyana Kendra dt. 19.7.1991

Ex.M2: Photostate copy of of lr. No. (1)/96-AE-1 dt. 26.5.1997

Ex.M3: Photostate copy of lr. No. (1)/96-AE-1 dt. 2.9.1997

Ex.M4: Photostate copy of lr. dt. 25.9.1997 termination order.

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी जनरल मेनेजर इंडियन कौंसिल ऑफ एग्रीकल्चरल रिसर्च एंड अदर्स हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 108/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.01.2014 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2014-आई आर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No 108/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy Director General, The Indian Council of Agricultural Research and Others, Hyderabad and their workman, which was recived by the Central Government on 10.01.2014.

[No. L-42012/3/2014-IR(DU)]
P.K. VENU GOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C. No. 108/2005

Between:

Sri B. Srinivas,
S/o Pentaiah, (Since died LR's brought on record)
2. Smt. Renuka W/o Late B. Srinivas
3. Baby Vaishnavi, D/o Late B. Srinivas
4. Smt. Narasamma, W/o Pentaiah
C/o 5-1-376/1, Shantinagar,
Zaheerabad.
(Petitioners No. 2 to 4 are added as per orders dated 25.2.2009 in IA 24/2008)

.....Petitioners

AND

1. The Deputy Director General,
The Indian Counsel of Agricultural Research,
Krishi Bhavan, New Delhi.

2. The Chairman,
Deccan Development Society,
Office at A-6 Meera Appts,
Basheerbagh, Hyderabad.

3. The Principal,
Krishi Vigyan Kendra,
Post Box No. 213, Zaheerabad.

.....Respondents

APPEARANCES:

For the Petitioner : M/s. T. Sharath & G.N. Raju, Advocates

For the Respondents M/s N.R. Devaraj & W. Satyanarayana, Advocates for R1

M/s. B. Nalin Kumar, K.S. Rahul, M.S. Chandresh K. Aravind Goud, Advocates for R2 & R3

AWARD

This petition under Sec. 2A (2) of the I.D. Act, 1947 has been filed by Shri B. Srinivas challenging his termination against the Management of the Indian Consel of Agricultural Research and Krishi Vigyan Kendra. The Petitioner filed this petition seeking for setting aside the order of termination and to direct the Respondents to reinstate the Petitioner with full back wages, continuity of service and other attendant benefits.

2. The averments made in the petition in brief are as follows:

Respondents one and two have common objects to promote and accelerate the process of education and training in the field of agriculture and to achieve these common objects they entered into a Memorandum of Understanding dated 19.7.1991 deciding to pool funds sent with man power and equipment. For the purpose of achieving these objectives Respondent first established the third Respondent at various districts in the state of A.P. Second Respondent recruited about 22 staff in various fields in different years commencing from 1994. 2nd Respondent recruited the Petitioner as Watchman on 1.4.1996 for placing with the third Respondent at Medak district. Ever since the appointment Petitioner has been discharging his duties to the satisfaction of the Respondents. In his letter of appointment it is stated that the appointment was temporary and till the continuation of the project and that it is liable to be terminated without assigning any reason. On 2.9.97 first Respondent addressed letter to all the Kendras regarding the funding, norms of building infrastrucures and staffing pattern. It is stated in the said letter that revised staff strength of 16 will be applicable for KVKs when the existing staff in the KVK are adjusted/redeployed within the over all institutes system or they are transferred or promoted or retired. The staff already adjusted should be treated as final. The position so vacated because of transfer promotion or retirement shall not be filled up in case these are exceeding revised strength of 16. Till such time the host institute make adjustment through redeployment or promotion or retirement, the existing staff shall continue to work in the KVK. For filling up of any vacant post prior approval of the council will have to be obtained" after receiving the said letter of the first Respondent without even assigning any reason 2nd Respondent issued letter of termination dated 25.09.97 to the Petitioner and others terminating their services on the ground that the main cut in finding is related to staff positions. First Respondent has specifically stated in the letter dated 2.9.97 that the existing staff shall continue to work for KVK *i.e.* third Respondent. First Respondent has approved the appointment of the Petitioner. Thus, under no circumstances 2nd Respondent can not terminate the services of the Petitioner on the ground of financial problems. Further, the persons who are appointed subsequent to the Petitioner has been left in the service. Absolutely, there is no basis for terminating the services of the Petitioner over looking the years of his service put in by him in the organisation. Petitioner questioned the said letter of termination by way of WP No. 7588 of 1998 and the Hon'ble High Court of A.P. permitted the Petitioner to discharge his duties. Pending interim order Petitioner was denied to discharge the duties pursuant to the interim order passed in WPMP No. 43754/1998 inWP No. 35510/1998. Since the third Respondent failed to comply with the interim order Petitioner filed contempt petition, since the Respondent raised the question of maintainability of writ petition on the ground that Respondent No. 3 does not fall under article 12 of Constitution of India Petitioner has withdrawn the writ petition on 23.1.2004 with leave of the Hon'ble High Court of A.P. to institute appropriate proceeding before this tribunal. Third Respondent who pleads on one hand that there are no funds and hence, services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments, on the other hand. It is not the case of the Respondents that the project has come to an end. They went upon to terminate the services of the Petitioner. All India KVK Employees Union filed WP No. 126/98 before Hon'ble Supreme Court of India, seeking for regularisation of their services in all Kendras of India. While disposing off the said writ petition supreme court held that even according to the affidavit filed by the first Respondent and letter dated 24.6.98 the grievance of the writ petitioners does not survive. In their counter first Respondent stated that the services of all employees are protected. Thus, Petitioner can not be terminated and the action of the third Respondent is illegal and violative of principles of natural justice and the same is liable to be set aside. For no fault of his, Petitioner is victimized and the practice of the third Respondent is unfair.

3. First Responsdent filed his counter with the averments in brief as follows:

First Respondent has nothing to do with the engagement or employment to the Petitioner made by the 2nd Respondent. Petitioner and others are neither employed nor employable nor retrenched by the first Respondent. This is solely in the domain of 2nd Respondent and 2nd Respondent alone is responsible. The number and the

trades of the members of staff are purely based on their requirements and utility. The services of Petitioner and five others were terminated by 2nd Respondent on the ground that strength of the staff of R3 has been reduced to 22 to 16. Only the services of junior most persons were terminated as they were engaged on purely temporary basis and are laible to be terminated at any time without any further notice. Petitioner is one of the junior most person whose services were terminated. The activities taken up in the given scheme are social welfare activities for the uplifitment of workmen and helping the poor and downtrodden in the society by implementing various schemes. In the said process personnel engaged in one scheme will be shifted to another and redeployment also will be there according to the requirement. As per the circumstances warrant R1 prescribes the number of persons to be engaged which either increases or decreases according to its requirements or necessity leaving it to the discretion of 2nd Respondent and the 2nd Respondent arranges the required number of staff. If there is no need the 2nd Respondent may terminate the services of the employees. R1 is not liable for any such activities of 2nd Respondent. Thus, first Respondent is not a necessary party and no relief can be sought for against him. Its misjoinder of parties as far as R1 is concerned. R1 is not an industry as defined u/s 2(j) of Industrial Disputes Act, 1947. Further, R1 is under the control of Central Government and comes under the definition of "State" under Article 12 of the Constitution. All the service rules and conditionality of services in FRSR and CCS & CCA Rules are applicable to the employees of R1. As per the principle laid down in the case of Rajendra *Vs.* State of Rajasthan (1999) (2) SCC 317, when the post temporarily created for fulfilling the needs of a particular project or scheme limited in its duration, comes to an end on account of the need for the project was fulfilled or had to be abandoned wholly or partially for want of funds, employer can not be compelled to continue employing such employees. The petition is liable to be dismissed.

4. 2nd and 3rd Respondents filed their counter with the averments in brief as follows:

2nd Respondent is a charitable institution working in the interest of rural poor. By developing them economically, socially and educationally by extending all support needed by them. It's a non-profit organisation which functions with the funds released by national and international donors and also adopting by nodal schemes of the state and central governments. They are not an industry within the meaning of the ID Act. Hence, petition is not maintainable. Respondents only assist the rural poor by educating them and by imparting techniques which are activities of industry under this act. 2nd Respondent is a registered rural development organisation. First Respondent has the responsibility for agricultural research education and for extension of education in the country and established Krishi vigyan Kendras/Trainee Training Centres in the districts with the object of promoting and accelerating the progress of education and training in the field of agriculture and allied areas under the scheme known as KVK/TTC on individual projects. Each project is entrusted to an implementing agency selecting a suitable organisation in the district. For the district of Medak ICAR has considered the 2nd Respondent as an implementing agency. They entered into a memorandum of understanding whereunder First Respondent has agreed to provide grant for the project according to the pattern of assistance approved under TTC/KVK subject to personal and budgetary limitations imposed by the Government of India from time to time. The administrative control over the staff employed under the scheme shall rest with the 2nd Respondent. Petitioner was appointed for the third Respondent as watchman on 1.4.1996 on adhoc basis and his appointment was subject to termination at any time. His salary was paid from out the funds provided by the first Respondent. His appointment was liable for termination without assigning any reason and without notice. While so, first Respondent issued letter dated 26.5.97 on funding patterns, norms of building infrastructures and staff in KVKs and also fixing staff pattern of each KVK comprising 16 courses. Further, 1st Respondent issued letter dated 2.9.97 stating that all KVKs which have not completed five years from the year of sanction will be provided 100% grants till they complete five years. Thereafter, all these KVKs will be funded by the 1st Respondent and implementing agency for a period of 5 years. On completion of 10 years the funding pattern would 50:50 percent by the first Respondent and hosting institute and it is further stated that all KVKs irrespective of their existence will be funded on 100% basis during the year 1997-98. In view of the drastic change in the funding process and second Respondent being a non-governmental organisation entirely dependent upon donor funds, is not in a position to continue the staff excess of 16. Thus, in excercise of power conferred in the above mentioned letter 2nd Respondent issued letter dated 25.9.97 informing the Petitioners and other that their services will not be required from 1.4.1998. Suppressing material facts, Petitioner and other filed WP 7588 of 1998 and obtained exparte interim orders. Respondents filed counter affidavits and thereafter, the said petition was dismissed for default. After waiting for a reasonable period Respondents addressed letter dated 2.9.98 discontinuing the services of the Petitioner and other by bringing the original termination order into force. Thereupon Petitioner and other filed a petition to restore WP 7588 of 1998. Respondents filed their counter affidavit mentioning the factum of termination. After hearing both parties Hon'ble High Court of A.P. restored WP No. 7588 of 1998 but, without reviving the exparte interim order. Ultimately the said writ petition was dismissed by order dated 10.2.99 with a finding that,

Petitioners can not seek relief under article 226 of Constitution of India. Petitioner filed WP No. 35510 of 1998 challenging the letter dated 2.9.98 and also Contempt Case No. 872 of 1998 but ultimately they were all withdrawn. Since it is not an "Industry" as defined in Sec. 2(j) of Industrial Dispute Act, 1947, the question of Petitioner falling within the meaning of workman as defined in Sec 2(S) does not arise. Therefore, Sec. 25(F) 25(G) and 25 (H) of the said act are not applicable to the facts and circumstances of this case. It is only a charitable institution and does not fall within the meaning of industry. The termination of the Petitioner would not amount to retrenchment under Sec. 2(oo) (bb) of the Industrial Dispute Act, 1947. The contention of the Petitioner that 2nd Respondent issued letter of termination dated 25.9.97 without giving any reason on the ground of main cut in funding relating to staff positions and that in the letter dated 2.9.97 1st respondent specifically stated that existing staff shall continue to work, are all not correct. Harmonious reading of said letter would reveal that 2nd Respondent is given liberty to reduce the staff strength to 16. 2nd Respondent reserved the power to terminate the services of the Petitioner without notice and without assigning reasons, while giving appointment order. The contention of the Petitioner that the employees who have been appointed in the year 1997 are left in the service, and that there is no basis for removal of the Pettitioner overlooking his service are all incorrect. Pettioner was terminated due to change in funding pattern by funding institutions. Whereas paper advertisement dated 23—29 March, 2002 was not the post held by the Petitioner, it relates to different post for which Petitioner is not qualified. The contention that first Respondent filed his counter in WP No. 126 of 1998 before Hon'ble Supreme Court of India stating that services of all employees is protected is not correct. The Said proceeding has no bearing on these Respondents. Petitioner is not entitled for the relief sought for. Petition is liable to be dismissed.

5. to substantiate the contentions of the Petitioner WW1 was examined and exhibits Ex W1 to W8 were marked.

6. After the closure of Petitioner's evidence and while the matter was comming for Respondent's evidence, since Petitioner expired, by virtue of order dated 25.2.2009 in IA No. 24/2008, Petitioners No. 2 to 4, the Legal Representatives of deceased original Petitioner were brought on record.

7. On behalf of Respondents MW1 and MW2 were examined and exhibits Ex. M1 to M4 are marked.

8. Heard the argument of either party. Written arguments were filed by respondent and the same were considered.

9. The points that arise for dertiermination are:

I. Whether activities of Respondents comes under the purview of defination of industry and whether Petitioner has been a workman?

II. Whether the orders passed by the 2nd Respondent terminating the services of the Petitioner No. 1 (Original Petitioner) is liable to be set aside? If so, on what grounds?

III. To what relief Petitioners No. 2 to 4 are entitled to ?

10. Point No. (I)

It is the contention of the Petitioners that Pettioner No. 1 has been a workman under Sec 2(s) of the Industrial Disputes Act, 1947 and the activities of the Respondents amounts to industry, under Sec. 2(j) of the Industrial Disputes Act, 1947. Sec. 2(J) of the said act read as follows:—

Industry means any business, trade, undertaking, manufacture or calling of employees and includes any calling service, emplopyment, handicaraft or industrial occupation or avocation of workman.

Whereas, Sec. 2(s) reads as follows:

"Workman' means any person (including an apprentice) employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissal, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissed, discharge or retrenchment has led to that dispute, but does not include any such persons—

(i) who is subject to the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundered rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

11. Now it is to be verified whether the activities of the Respondents attract the ingredients of the term industry, cited above. Admittedly, the activities of the Respondents are carrying out agricultural research, veterinary matters, raising agricultural productions etc., and rendering assistance to rural poor to develop economically, socially and educationally with the help of the funds donated by donors or the government, as per the schemes and objectives for which purpose the funds are released.

12. It is the contention of the Respondents that their activities do not generate any profits, and on the other hand they are philanthropical activities and thus, they do not fall under the category of industry. It is not the contention of the Pettioners that Respondents are earning any profit through their activities. Now, it is to be verifed whether the above mentioned activities of the Respondents do fall under category of industry. As per the definition of industry given under sec. 2(j) of the Industrial Disputes Act, 1947, any service also will come under the purview of the said definition.

13. Learned Counsel for the Respondents 2 and 3 relied upon the principles laid down in the case of Physical Research Laboratory Vs. KG Sarma (1997) 4 SCC page 257, whereunder, a Division Bench of Hon'ble Supreme Court of India has distinguished the principles laid down in the case of the Bangalore Water Supply And Sewerage Board vs. A Rajappa, [(1978) 2 SCC 213] and held that " while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principle "noscitur a sociis was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Further more, an activity undertaken by government can not be regarded as an industry if it is done in discharging sovereign functions."

14. Whereas Learned Counsel for the Pettioners relied upon the principles laid down by the Apex Court in the case of JK Cotton Spinning and Weaving Mills Co. Limited Vs. Labour Appellate Tribunal of India IIIRD Branch, Lucknow 1964-AIR(SC)-0-737/1964-SCR-3-724 and in the case of Mahila Samiti, Tikamgarh and State of Madhya Pradesh and Ors. 1993 III LLJ page 46, in support of his contention that the principles laid down in the case of Bangalore Water supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 and Satnarayana Sharma and Ors. Vs. National Mineral Development Corporation Ltd. and ORs. 1993 III LLJ, 472 still hold the field.

15. In the case of Nehru Yuva Kendra Sangathan Vs. Union of India, the Hon'ble High Court of Delhi considered the principles laid down in various cases including the case of Physical Laboratory (relied upon by the respondents). Considering the legal situation that in the case of Coir Board Vs. Indira Devi 1988 III SCC 259, the Hon'ble Supreme Court of India had decided to refer the decision in Bangalore Water Supply case for reconsideration by a larger Bench but subsequently three judges Bench of the Hon'ble Supreme Court of India held by its order dated 10.11.1998 in Coir Board case that Bangalore Water Supply case does not require any reconsideration, Hon'ble Delhi High Court had categorically held in the case of Nehru Yuva Kendra Sangathan Vs. Union of India after discussing various legal precedents, that obviously Bangalore Water Supply case which is a seven Judge Bench judgement rendered by the Apex Court still holds the field. Further Hon'ble Delhi High Court referred to the case of General Manager Telecom vs. S. Srinivasa Rao 1997 SCC 767, whereunder also it was held by three Judges Bench of the Apex Court that the Bangalore Water Supply case holds the field and it is binding precedent.

16. It is not the case of the respondents that any larger bench of the Apex Court was formulated for reconsidering the principles laid down by the seven judges Bench of Apex Court Bangalore Water Supply case. Thus, it is very much clear that the said judgement continues to be a binding legal precedent.

17. In the Bangalore Water Supply case, it is held that "absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relation."

18. In the circumstance, just because the activities of the respondents do not generate any profit and they are philanthropic in nature, it will not change the fact that the said activities come under the purview of the definition of industry since the decisive test is the nature of the activity with special emphasis of employer and employee relationship. The nature of the activity in this case is a systematic activity organized with cooperation between employer and employees for rendering services calculated to satisfy human wants and wishes *i.e.,* improving the production of agricultural products and also developing the rural poor, socially economically and educationally etc. Thus, the activities of the Respondents attract the ingredients of the definition of 'Industry' as provided under Sec. 2(j) of Industrial Disputes Act., 1947 and thus, it is an 'Industry'.

19. Consequentially, the persons who work for the Respondents will certainly come under the purview of the definition of the workman given under Sec. 2(S) of the Industrial Disputes Act, 1947, since, as already cited above, Sec. 2(S) of the said Act, provides that any persons employed in any industry to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward is a workman. Thus, deceased Petitioner who has been appointed as Watchman by 2nd Respondent and has been deputed to work so with the 3rd Respondent will certainly come under the purview of the definition of the workman referred to above. In the case of Mahila samithi, Thimkkamgarh Vs. State of M.P. 1993 III LLJ page 468 relied upon by the counsel for the Petitioner it is held to the effect that the employees of the Mahila Samithi which is engaged in systematic activites of promoting training women in family planning programme etc., which is an industry, will certainly come under the purview of the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947. This principle is a guiding principle to arrive act the conclusion that the Petitioner is a workman.

20. Thus, it can safely be held that the activities of the respondents come under the purview of the industry as defined under Sec. 2(j) of Industrial Disputes Act, 1947 and 1st Petitioner will come under the definition of the workman under Sec. 2(s) of the Industrial Disputes Act, 1947.

This point is answered accordingly.

21. Point No. II:

It is a undisputed fact that 1st Petitioner who has been working as Watchman since 1.4.1996 with the 3rd Respondent, being appointed to the said post by the 2nd Respondent by virtue of the order dated 1.4.1996 has been terminated from services by the 2nd Respondent *w.e.f.* 1.4.1998 by virtue of Ex. W4 the letter dated 25.9.1997. The reason for termination of services of the 1st Petitioner have been given in Ex. W4 as that first Respondent has changed its guidelines and have provided a reduced budget to voluntary organisation to run their KVKs that the main cut in funding it related to staff positions and inspite of their best efforts 2nd Respondent could only get a grace period of some months and as the cut becomes effective from 1.4.1998, the services of 1st Petitioner were terminated with effect from the said date.

22. First Peitioner has been questioning the reasonableness of termination of his services in that manner and claiming that 2nd Respondent can not terminate services of the 1st Petitioner on the ground of financial problems and that further persons who are appointed subseqent to the 1st Petitioner have been left in service and thus, there is discrimination. Further, it has been claimed by the 1st Petitioner that 3rd Respondent who pleads on one hand that as there are no funds the services of the 1st Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments on the other hand and that as per the terms of his appointment 1st Petitioner has been entitled to continue in service until the project comes to an end.

23. Whereas it is the claim of the Respondents that 1st Petitioner has been one of the juniormost persons and therefore his services were terminated, as there was need for retrechment. It is the further contention of the Respondents that 1st Petitioner was appointed on adhoc basis and his appointment was subject to termination at any time without assigning any reason and without notice and further that in view of the drastic change brought out in funding process by the 1st Respondent, 2nd Respondent was constrained to terminate the services of the 1st Petitioner. The 2nd Respondent is further denying the truth of the contention of the 1st Petitioner that the employees employed subsequent to him are still left in service and that paper advertisement dated 23-29 March, 2002 does not relate to the post of 1st Petitioner.

24. Thus, it is to be verified that any person who was appointed subsequent to the 1st Petitioner have been left in service, while terminating the services of the 1st Petitioner and if so it is a justified action. The other point to be decided is whether the Respondents who have terminated the services of the 1st Petitioner claiming that for want of funds they could not continue him in service are justified in making new appointments in March, 2002. The third aspect to be decided is whether Respondents can terminate the services of the 1st Petitioner without notice and without assigning reasons and also without paying compensation.

25. As to the first point mentioned above, is concerned, Ex. W8 is the details of the staff working in the given KVK as on February, 1998 produced before the court by the 1st Petitioner. This document has been marked with the consent of the Respondents on 12.7.2006. That means the correctness of this document is admitted by the Respondents. As can be seen from this document 1st Petitioner has been appointed on 1.4.1996 whereas, one Kasyap training assistant has been appointed on 31.3.97. There are several other employees who were appointed in the years 1995 and 1996 also. Thus, it can not be termed that 1st Petitioner has been the juniormost employee of the Respondents. As can been seen from Ex. W4, the reason given for termination of the services of the 1st Petitioner is that as the cut in funding is relating to staff positions 1st Petitioner's services were terminated and it is the claim of the Respondents that as1st Petitioner has been one of the juniormost employees his services were terminated due to cut in the funding. But the fact appears to be otherwise, as per the discussions held above, in the light of the conents of Ex. W8. There are several other employees who are juniors to the 1st Petitioner when the dates of appointment of these persons are considered, are still continuing in the service. It is not the claim of the Respondents that considering the nature of the work being done by the various workman and its importance to the organisation, they have chosen to retain some and terminate the others. It is their categorical contention that as the 1st Petitioner was one of the junior most employees his services were terminated, which is not a correct statement. Therefore, the contention of the 1st Petitioner that the persons who are appointed subsequent to him were left out in service and his services were terminated by the Respondents, is to be accepted as a correct contention. It amounts to discrimination which shall never be allowed. It is the set principle that the last come first go. So the action of the Respondents in this regard is not justifiable.

26. As to second aspect to be considered is concerned certainly, the Respondents are not justified in recruiting new persons when they terminated the services of the 1st Petitioner on the ground of non-availability of sufficient funds. It is the contention of the Respondents that the vacancies advertised by virtue of Ex. W7 advertisement are diffferent posts to the post held by the

1st Petitioner, that 1st Petitioner got no qualifications to hold any such posts and therefore, they can not be find fault with for making new appointments.

27. But the fact remains that 1st Petitioner who was in the service of Respondents was removed from service only on the ground that funds were not available. If funds were not available no fresh appointments can be made. The grievance of the 1st Petitioner has been that Respondents were making new appointments. It is a fact that new appointments were made. Then there is no justification, in terminating the services of the 1st Petitioner.

28. As to the third aspect is concerned, just because it is mentioned in the appointment order that without notice 1st Petitioner's services can be terminated Respondents can not do as such since, the provisions of Sec. 25(F) of the Industrial Disputes Act, 1947 provides for one month's notice, and payment of retrenchment compensation to the workman who is retrenched. Thus, irrespective of the contents of the appointment order given to the 1st Petitioner who was a workman, Respondents are liable to give one month notice. In this case, sufficient notice has been given to the 1st Petitioner, but evidently no retrechment compensation has been given to him. On this ground also Ex. W4 order is not a maintenance order.

29. In view of the foregone discussion of the material on record it can safely be held that Ex. W4 the order passed by the 2nd Respondent terminating the services of the 1st Petitioner is not maintainable and is liable to be set aside.

This point is answered accordingly.

30. Point No. III:

In view of the findings arrived at above, Ex. W4 order is liable to be set aside and consequently, 1st Petitioner would have been entitled for reinstatement into service if he is alive. But, unfortunately, he expired while this proceeding has been pending enquiry before this Tribunal and his Legal Representatives *i.e.* Petitioners 2 to 4 who are no other than the wife and children of the deceased 1st Petitioner/workman have been brought on record. In the given circumstances, the question of reinstatement of 1st Petitioner into service does not arise. The only relief to which the Petitioners will be entitled to is the monetary benefits to which the 1st Petitioner would have been entitled to during his life time consequent to Ex. W4 order being set aside. If Petitioner would have been alive he would have been entitled to be reinstated into service and further he would have been entitled to continuity of service and other attendant benefits. The monetary gains to which 1st Petitioner thus would have been entitled to, are to be passed on to his legal heirs. Thus, calculating the wages and other benefits to which he would have been entitled to if he would have been reinstated into services and continued to be in service until the date of his demise, the said amount is to be paid to the Petitioners 2 to 4 by the Respondent Management. This is the relief to which Petitioner's are entitled to.

This point is answered accordingly.

31. Result:—

In the result, Petition is allowed. The impugned order dated 25.09.97 issued by the 2nd Respondent is hereby set aside. Consequently, 1st Petitioner would have been entitled to reinstatement into service and continuity of service and other attendant benefits, until the date of his demise. Petitioners 2 to 4 being his legal representatives are entitled for the monetary reliefs to which 1st Petitioner would have been entitled to, if he continued to live and reinstated into service and died while in service. Respondent Management is hereby directed to calculate the said amount and pay the same to the Petitioners 2 to 4 forthwith. Petitioners 2 to 4 are entitled for the said amount in equal shares.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 19th day of July, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri B. Srinivas	MW1: Sri K. Srinivasa Rao MW2: Sri A. Giridhar

Documents marked for the Petitioner

Ex. W1: Photostat copy of Memorandum of Understanding dt. 19.7.1991

Ex. W2: Photostat copy of Ir. No. 1(1)/96-AE-1 dt. 2.9.1997

Ex. W3: Photostat copy of appointment Ir. dt. 1.4.1996

Ex. W4: Photostat copy of Ir. dt. 25.9.1997

Ex. W5: Photostat copy of order in WP Nos 7588/1998 & 35510/1998

Ex. W6: Photostat copy of order of Hon'ble Supreme Court dt. 24.8.1998

Ex. W7: Photostat copy of employment newspaper cutting dt. 23-29 March, 2002

Ex. W8: Photostat copy of statement showing working staff in KVK, Zaheerabad as on February, 1998

Documents marked for the Respondents

Ex. M1: Attested copy of Memorandum of Understanding between the Indian Council of Agricultural Research, Krishi Bhawan, New

Delhi and the Deccan Krishi Vigyana Kendra dt. 19.7.1991

Ex. M2: Photostat copy of Ir. No.1(1)/96-AE-1 dt. 26.5.1997

Ex. M3: Photostat copy of Ir. No. 1(1)/96-AE-1 dt. 2.9.1997

Ex. M4: Office copy of Ir. dt. 25.9.1997 termination order.

नई दिल्ली, 13 जनवरी, 2014

का॰आ॰ 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार डिप्टी जनरल मेनेजर इंडियन कौंसिल ऑफ़ एग्रीकल्चरल रिसर्च एंड ओठेर्स हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 109/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/3/2014-आई आर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th January, 2014

S.O. 379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), as the Central Government hereby publishes the Award (I.D. No. 109/2005) the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy Director General, The Indian Council of Agricultural Research and Others, Hyderabad and their workman, which was received by the Central Government on 10/01/2014.

[F.No. L-42012/3/2014-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C. NO. 109/2005

Between:

Sri D. Venkata Ramana,
S/o Late Venkateswarlu,
C/o T. Sharath & G.N. Raju,
Advocates, R/o Plot No. 145,
Road No. 10, Jubilee Hills,
Hyderabad. .....Petitioner

AND

1. The Deputy Director General,
The Indian Counsel of Agricultural Research,
Krishi Bhavan, New Delhi.

2. The Chairman,
Deccan Development Society,
Office at A 6 Meera Appts,
Basheerbagh, Hyderabad.

3. The Principal,
Krishi Vigyana Kendra,
Post Box No. 213, Zaheerabad.

.....Respondents

Appearances:

For the Petitioner: M/s. T. Sharath & G.N. Raju, Advocates

For the Respondents: M/s. N.R. Devaraj & W. Satyanarayana, Advocates for R 1

M/s. B. Nalin Kumar, K.S. Rahul, M.S. Chandresh & K. Aravind Goud, Advocates for R2 & R3

AWARD

This petition under Sec. 2 A (2) of the I.D. Act, 1947 has been filed by Sri D. Venkata Ramana challenging his termination against the Management of the Indian Counsel of Agricultural Research and Krishi Vigyana Kendra. The Petitioner filed this petition seeking for setting aside the order of termination and to direct the Respondents to reinstate the Petitioner with full back wages, continuity of service and other attendant benefits.

2. The averments made in the petition in brief are as follows:

Respondents one and two have common objects to promote and accelerate the process of education and training in the field of agriculture and to achieve these common objects they entered into a Memorandum of Understanding dated 19.7.1991 deciding to pool funds sent with man power and equipment. For the purpose of achieving these objectives Respondent first established the third Respondent at various districts in the state of A.P. Second Respondent recruited about 22 staff in various fields in different years commencing from 1994. 2nd Respondent recruited the Petitioner as Messenger on 1.4.1996 for placing with the third Respondent at Medak district. Ever since the appointment Petitioner has been discharging his duties to the satisfaction of the Respondents. In his letter of appointment it is stated that the appointment was temporary and till the continuation of the project and that it is liable to be terminated without assigning any reason. On 2.9.97 first Respondent addressed letter to all the Kendras regarding the funding, norms of building infrastructure and staffing pattern. It is stated in

the said letter that revised staff strength of 16 will be applicable for KVKs when the existing staff in the KVK are adjusted/redeployed within the over all institutes system or they are transferred or promoted or retired. The staff already adjusted should be treated as final. The position so vacated because of transfer promotion or retirement shall not be filled up in case these are exceeding revised strength of 16. Till such time the host institute make adjustment through redeployment or promotion or retirement, the existing staff shall continue to work in the KVK. For filling up of any vacant post prior approval of the council will have to be obtained" after receiving the said letter of the first Respondent without even assigning any reason 2nd Respondent issued letter of termination dated 25.9.97 to the Petitioner and others terminating their services on the ground that the main cut in funding is related to staff positions. First Respondent has specifically stated in the letter dated 2.9.97 that the existing staff shall continue to work for KVK *i.e.,* third Respondent. First Respondent has approved the appointment of the Petitioner. Thus, under no circumstances 2nd Respondent can not terminate the services of the Petitioner on the ground of financial problems. Further, the persons who are appointed subsequent to the Petitioner has been left in the service. Absolutely, there is no basis for terminating the services of the Petitioner over looking the years of his service put in by him in the organisation. Petitioner questioned the said letter of termination by way of WP No. 7588 of 1998 and the Hon'ble High Court of A.P. permitted the Petitioner to discharge his duties. Pending interim orders Petitioner was demied to discharge the duties pursuant to the interim order passed in WPMP No. 43754/1998 in WP No. 35510/1998. Since the third Respondent failed to comply with the interim order Petitioner filed contempt petition, since the Respondent raised the question of maintainability of writ petition on the ground that Respondent No. 3 does not fall under article 12 of Constitution of India Petitioner has withdrawn the writ petition on 23.1.2004 with leave of the Hon'ble High Court of A.P. to institute appropriate proceeding before this tribunal. Third Respondent who pleads on one hand that there are no funds and hence, services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments, on the other hand. It is not the case of the Respondents that the project has come to an end. They went upon to terminate the services of the Petitioner. All India KVK Employees Union filed WP No. 126/98 before Hon'ble Supreme Court of India, seeking for regularisation of their services in all Kendras of India. While disposing off the said writ petition supreme court held that even according to the affidavit filed by the first Respondent and letter dated 24.6.98 the grievance of the writ petitioners does not survive. In their counter first Respondent stated that the services of all employees are protected. Thus, Petitioner cannot be terminated and the action of the third Respondent is illegal and violative of principles of natural justice and the same is liable to be set aside. For no fault of his, Petitioner is victimized and the practice of the third Respondent is unfair.

3. First Respondent filed his counter with the averments in brief as follows:

First Respondent has nothing to do with the engagement or employment to the Petitioner made by the 2nd Respondent. Petitioner and others are neither employed nor employable no retrenched by the first Respondent. This is solely in the domain of 2nd Respondent and 2nd Respondent alone is responsible. The number and the trades of the members of staff are purely based on their requirements and utility. The services of Petitioner and five others were terminated by 2nd Respondent on the ground that strength of the staff of R3 has been reduced to 22 to 16. Only the services of junior most persons were terminated as they were engaged on purely temporary basis and are liable to be terminated at any time without any further notice. Petitioner is one of the junior most person whose services were terminated. The activities taken up in the given scheme are social welfare activities for the upliftment of workmen and helping the poor and downtrodden in the society by implementing various schemes. In the said process personnel engaged in one scheme will be shifted to another and redeployment also will be there according to the requirement. As per the circumstances warrant R1 prescribes the number of persons to be engaged which either increases or decreases according it its requirements or necessity leaving it to the discretion of 2nd Respondent and the 2nd Respondent arranges the required number of staff. If there is no need the 2nd Respondent may terminate the services of the employees. R1 is not liable for any such activities of 2nd Respondent. Thus, first Respondent is not a necessary party and no relief can be sought for against him. Its misjoinder of parties as far as R1 is concerned. R1 is not an industry as defined u/s 2(j) of Industrial Disputes Act, 1947. Further, R1 is under the control of Central Government and comes under the definition of "State" under Article 12 of the Constitution. All the service rules and conditionality of services in FRSR and CCS & CCA Rules are applicable to the employees of R1. As per the principle laid down in the case of Rajendra Vs. State of Rajasthan (1999)(2) SCC 317, when the post temporarily created for fulfilling the needs of a particular project or scheme limited in its duration, comes to an end on account of the need for the project was fulfilled or had to be abandoned wholly or partially for want of funds, employer can not be compelled to continue employing such employees. The petition is liable to be dismissed.

4. 2nd and 3rd Respondents filed their counter with the averments in brief as follows:

2nd Respondent is a charitable institution working in the interest of rural poor. By developing them

economically, socially and educationally by extending all support needed by them. It's a non-profit organisation which functions with the funds released by national and international donors and also adopting by nodal schemes of the state and central governments. They are not an industry within the meaning of the ID Act. Hence, petition is not maintainable. Respondents only assist the rural poor by educating them and by imparting techniques which are not activities of industry under this act. 2nd Respondent is a registered rural development organisation. First Respondent has the responsibility for agricultural research education and for extension of education in the country and established Krishi Vigyana Kendras/Trainee Training Centres in the districts with the object of promoting and accelerating the progress of education and training in the field of agriculture and allied areas under the scheme known as KVK/TTC on individual projects. Each project is entrusted to an implementing agency selecting a suitable organisation in the district. For the district of Medak ICAR has considered the 2nd Respondent as an implementing agency. They entered into a memorandum of understanding whereunder first Respondent has agreed to provide grant for the project according to the pattern of assistance approved under TTC/KVK subject to personal and budgetary limitations imposed by the Government of India from time to time. The administrative control over the staff employed under the scheme shall rest with the 2nd Respondent. Petitioner was appointed for the third Respondent as Peon-cum-Messenger on 1.4.1996 on adhoc basis and his appointment was subject to termination at any time. His salary was paid from out of the funds provided by the first Respondent. His appointment was liable for termination without assigning any reason and without notice. While so, first Respondent issued letter dated 26.5.97 on funding patterns, norms of building infrastructures and staff in KVKs and also fixing staff pattern of each KVK comprising 16 courses. Further, 1st Respondent issued letter dated 2.9.97 stating that all KVKs which have not completed five years from the year of sanction will be provided 100% grants till they complete five years. Thereafter, all these KVKs will be funded by the 1st Respondent and implementing agency for a period of 5 years. On completion of 10 years the funding pattern would be 50 : 50 percent by the first Respondent and hosting institute and it is further stated that all KVKs irrespective of their existence will be funded on 100% basis during the year 1997-98. In view of the drastic change in the funding process and second Respondent being a non-government organisation entirely dependent upon donor funds, is not in a position to continue the staff excess of 16. Thus, in exercise of power conferred in the above mentioned letters 2nd Respondent issued letter dated 25.9.97 informing the Petitioners and others that their services will not be required from 1.4.1998. Suppressing material facts, Petitioner and others filed WP 7588 of 1998 and obtained exparte interim orders. Respondents filed counter affidavits and thereafter, the said petition was dismissed for default. After waiting for a reasonable period Respondents addressed letter dated 2.9.98 discontinuing the services of the Petitioner and others by bringing the original termination orders into force. Thereupon Petitioner and others filed a petition to restore WP 7588 of 1998. Respondents filed their counter affidavit mentioning the factum of termination. After hearing both parties Hon'ble High Court of A.P. restored WP No. 7588 of 1998 but, without reviving the exparte interim order. Ultimately the said writ petition was dismissed by order dated 10.2.99 with a finding that, Petitioners can not seek relief under article 226 of Constitution of India. Petitioners filed WP No. 35510 of 1998 challenging the letter dated 2.9.98 and also Contempt Case No. 872 of 1998 but ultimately they were all withdrawn. Since it is not an "Industry" as defined in Sec. 2(j) of Industrial Disputes Act, 1947, the question of Petitioner falling within the meaning of workman as defined in Sec. 2(S) does not arise. Therefore, Sec. 25 [F 25(G) and 25 (H)] of the said act are not applicable to the facts and circumstances of this case. It is only a charitable institution and does not fall within the meaning of industry. The termination of the Petitioner would not amount to retrenchment under Sec. 2(oo) (bb) of the Industrial Disputes Act, 1947. The contention of the Petitioner that 2nd Respondent issued letter of termination dated 25.9.97 without giving any reason on the ground of main cut in funding relating to staff positions and that in the letter dated 2.9.97 1st Respondent specifically stated that existing staff shall continue to work, are all not correct. Harmonious reading of said letter would reveal that 2nd Respondent is given liberty to reduce the staff strength to 16. 2nd Respondent reserved the power to terminate the services of the Petitioner without notice and without assigning reasons, while giving appointment order. The contention of the Petitioner that the employees who have been appointed in the year 1997 are left in the service, and that there is no basis for removal of the Petitioner overlooking his service are all incorrect. Petitioner was terminated due to change in funding pattern by funding institutions. Whereas paper advertisement dated 23-29 March, 2002 was not the post held by the Petitioner, it relates to different post for which Petitioner is not qualified. The contention that first Respondent filed his counter in WP No. 126 of 1998 before Hon'ble Supreme Court of India stating that services of all employees is protected is not correct. The said proceeding has no bearing on these Respondents. Petitioner is not entitled for the relief sought for. Petition is liable to be dismissed.

5. To substantiate the contentions ofthe Petitioner WW1 was examined and exhibits Ex. W1 to W8 were marked. On behalf of Respondents MW1 and MW2 were examined and exhibits Ex. M1 to M4 are marked.

6. Heard the arguments of either party. Written arguments were filed by Respondent and the same were considered.

7. The points that arise for determination are:

I. Whether Activities of Respondents comes under the purview of definition of industry and whether Petitioner is a workman?

II. Whether the orders passed by the 2nd Respondent terminating the services of the Petitioner if liable to be set aside? If so, on what grounds?

III. To what relief Petitioner is entitled to?

8. Point No. (I):

It is the contention of the Petitioner that he is a workman under Sec. 2(s) of the Industrial Disputes. Act, 1947 and the activities of the Respondents amounts to industry, under Sec.2(j) of the Industrial Disputes Act, 1947. Sec.2(j) of the said act read as follows:

Industry means any business, trade, undertaking, manufacture or calling of employees and includes and calling service, employment, handicraft or industrial occupation or avocation of workman."

Whereas, Sec. 2(s) reads as follows:

'Workman' means any person (including an apprentice) employed in any industry to any manual, unskilled, skilled, technical, operational, or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute. includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not incoude any such person—

i) who is subject to the Air Force Act,1950, or the Army Act, 1950, or the Navy Act, 1957; or

ii) who is employed in the police service or as an officer or other employee of a prison; or

iii) who is employed mainly in a managerial or administrative capacity; or

iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. Now, it is to be verified whether the activities of the Respondents attract the ingredients of the term industry, cited above. Admittedly, the activities of the Respondents are carrying out agricultural research, veterinary matters, raising agricultural productions etc., and rendering assistance to rural poor to develop economically, socially and educationally with the held of the funds donated by donors or the government, as per the schemes and objectives for which purpose the funds are released.

10. It is the contention of the Respondents that their activities do not generate any profits, and on the other hand they are philanthropical activities and thus, they do not fall under the category of industry. It is not the contention of the Petitioner that Respondents are earning any profit through their activities. Now, it is to be verified whether the above mentioned activities of the Respondents do fall under category of industry. As per the definition of industry given under sec. 2(j) of the Industrial Disputes Act, 1947, any service also will come under the purview of the said definition.

11. Learned Counsel for the Respondents 2 and 3 relied upon the principles laid down in the case of ***Physical Research Laboratory Vs. KG Sarma (1997) 4 SCC page 257,*** whereunder, a Division Bench of Hon'ble Supreme Court of India has distinguished the principles laid down in the case of the ***Bangalore Water Supply And Sewerage Board Vs. A. Rajappa, [(1978) 2 SCC 213]*** and held that ***"while interpreting the words 'undertaking', 'calling' and 'service' which are of much wider import, the principle "noscitur a sociis was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Further more, an activity undertaken by govenment can not be regarded as an industry if it is done in discharging sovereign functions."***

12. Whether Learned Counsel for the Petitioner relied upon the principles laid down by the Apex Court in the case ***JK Cotton Spinning and Weaving Mills Co Limited Vs. Labour Appellate Tribunal of India IIIRD Branch. Lucknow 1964-AIR(SC)-0-737/1964-SCR-3-724*** and in the case *of* ***Mahila Samiti, Tikamgarh and State of Madhya Pradesh and Ors. 1993 III LLJ page 46,*** in support of his contention that the principles laid down in the case of ***Bangalore Water Supply and Sewerage Board vs. A Rajappa, (1978) 2 SCC 213*** and ***Satynarayana Sharma and Ors. Vs. National Mineral Development Corporation Ltd. and Ors. 1993, III LLJ, 472*** still hold the filed.

13. In the case of ***Nehru Yuva Kandra Sangathan Vs. Union of India, the Hon'ble High Court of Delhi*** considered the principles laid down in various cases including the case of *Physical Laboratory* (relied upon by the respondents). Considering the legal situation that in the case of *Coir Board Vs. Indira Devi 1988 III SCC 259,* the Hon'ble Supreme Court of India had decided to refer the decision in Bangalore Water Supply case for reconsideration by a larger Bench but subsequently three judges Bench of the Hon'ble Supreme Court of India held by its order dated 10.11.1998 in Coir Boad case *that Bangalore Water Supply Case* does not require any reconsideration, Hon'ble Delhi High Court had categorically

held in the case of *Nehru Yova Kendra Sangathan Vs. Union of India* after discussing various legal precedents, that abviously Bangalore Water Supply case which is a seven Judge Bench judgement rendered by the Apex Court still holds the field. Further *Hon'ble Delhi High Court* referred to the case of *General Manager Telecom vs. S. Srinivasa Rao 1997 SCC 767,* whereunder also it was held by three Judges Bench of the Apex Court that the Bangalore Water Supply case holds the field and it is binding precedent.

14. It is not the case of the respondents that any larger benach of the Apex Court was formulated for reconsidering the principles laid down by the seven judges Bench of Apex Court in Bangalore Water Supply case. Thus, it is very much clear that the said judgement continues to be a binding legal precedent.

15. In the Bangalore Water Supply case, it is held that "**absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, privater or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employee relation.**"

16. In the circumstances, just because the activities of the respondents do not generate any profit and they are philanthropic in nature, it will not change the fact that the said activities come under the purview of the definition of industry since the decisive test is the nature of the activity with special emphasis of employer and employee relationship. The nature of the activity in this case is, a systematic activity organized with cooperation between employer and employees for rendering services calculated to satisfy human wants and wishes i.e. improving the production of agricultural products and also develping the rural poor, socially economically and educationally etc. Thus, the activities of the Respondents attract the ingredients of the definition of 'Industry' as provided under Sec. 2(j) of Industrial Disputes Act, 1947 and thus, it is an 'Industry'.

17. Consequentially, the persons who work for the Respondents will certainly come under the purview of the definition of the workman given under Sec. 2(s) of the Industrial Disputes Act, 1947, since, as already cited above, Sec.2(s) of the said Act, provides that any person employed in any industry to any manual, unskilled skilled, technical, operational, clerical or supervisory work for hire or reward is a workman. Thus, Petitioner who has been appointed as Peon-cum-Messanger by 2nd Respondent and has been deputed to work so with the 3rd Respondent will certainly come under the purview of the definition of the workman referred to above. In the case of ***Mahila Samithi, Thimkkamgarh Vs. State of M.P. 1993 III LLJ page 468*** relied upon by the counsel for the Petitioner it is held to the effect that the employees of the Mahila Samithi which is engaged in systematic activities of promoting training women in family planning programme etc., which is an industry, will certainly come under the purview of the definition of workman u/s 2(s) of the Industrial Disputes Act, 1947. This principle is a guiding principle to arrive at the conclusion that the Petitioner is a workman.

18. Thus, it can safely be held that the activities of the respondents come under the purview of the industry as defined under Sec.2(i) of Industrial Disputes act, 1947 and Petitioner comes under the definition of the workman under Sec.2(s) of the Industrial Disputes Act, 1947.

This point is answered accordingly.

19. Point No. II:

It is an undisputed fact that Petitioner who has been working as Peon-cum-Messenger since 1.4.1996 with the 3rd Respondent, being appointed to the said post by the 2nd Respondent by virtue of the order dated 1.4.1996 has been terminated from services by the 2nd Respondent w.e.f. 1.4.1998 by virtue of Ex W4 the letter dated 25.9.1997. The reason for termination of services of the Petitioner have been given in Ex. W4 as the first Respondent has changed its guidelines and have provided a reduced budget to voluntary organisation to run their KVKs that the main cut in funding is related to staff positions and inspite of their best efforts 2nd Respondent could only get a grace period of some months and as the cut becomes effective from 1.4.1998, the srvices of Petitioner were terminted with effect from the said date.

20. Petitioner is questioning the reasonaleleness of termination of his srvices in that manner and claiming that 2nd Respondent can not terminate services of the Petitioner on the ground of financial problems and that further person who are appointed subsequent to the Petitioner have been left in service and thus, there is discrimination. It is further claimed by the Petitioner that 3rd Respondent who pleads on one hand that as there are no funds the services of the Petitioner were terminated, has issued a paper advertisement in March, 2002 in Employment News calling for new appointments on the other hand and that as per the terms of his appointment Petitioner is entitled to be continued in service until the project come to an end.

21. Whereas it is the claim of the Respondents that Petitioner is one of the juniormost persons and therefore his services were terminated, as there was need for retrenchment. It is the further contention of the Respondnets that petitioner was appointed on adhoc basis and his appointment was subject to termination at any time without assigning any reason and without notice and further that in view of the drastic change brought out in funding process by the 1st Respondent, 2nd Respondent was constrained to terminate the services of the Petitioner. The 2nd Respondent is further denying the truth of the contention of the Petitioner that the employees employed subsequent to him are still left in service and that paper

advertisement dated 23-29 March, 2002 does not relate to the post of Petitioner.

22. Thus, it is to be verified that any person who was appointed subsequent to the Petitioner have been left in service, while terminating the services of the Petitioner and if so it is a justified action. The other point to be decided is whether the Respondents who have terminated the services of the Petitioner claiming that for want of funds they can not continue him in service are justified in making new appointments in march, 2002. The third aspect to be decided is whether Respondents can terminate the services of the Petitioner without notice and without assigning reasons and also without paying compensation.

23. As to the first point mentioned above, is concerned, Ex. W8 is the details of the staff working in the given KVK as on February, 1998 produced before the court by the Petitioner. This document has been marked with the consent of the Respondents on 12.7.2006. That means the correctness of this document is admitted by the Respondents. As can be seen from this document Petitioner has been appointed on 1.4.1996 whereas, one Kasyap training assistant has been appointed on 31.3.97. There are several other employees who were appointed in the years 1995 and 1996 also. Thus, it can not be termed that Petitioner is the juniormost employee of the Respondents. As can been seen from Ex. W4, the reason given for termination of the services of the Petitioner is that as the cut in funding is relating to staff positions Petitioner's services were terminated and it is the claim of the Respondents that as Petitioner is one of the juniormost employees his services were terminated due to cut in the funding. But the fact appears to be otherwise, as per the discussions held above, in the light of the contents of Ex.W8. There are several other employees who are juniors to the Petitioner when the dates of appointment of these persons are considered, are still continuing in the services. It is not the claim of the Respondents that considering the nature of the work being done by the various workmen and its importance to the organisation, they have chosen to retain some and terminte the others. It is their categorical contention that as the Petitioner was one of the junior most employees has services were terminated, which is not a correct statement. Therefore, the contention of the petitioner that the persons who are appointed subsequent to him were left out in service and his services were terminated by the Respondents, is to be accepted as a correct contention. It amounts to discrimination which shall never be allowed. it is the principle that the last come first go. So the action of the Respondents in this regard is not justifiable.

24. As to the second aspect to be considered is concerned certainly, the Respondents are not justified in recruiting new persons when they terminated the services of the Petitioner on the ground of non-availability of sufficient funds. It is the contention of the Respondents that the vacancies advertised by the virtue of Ex.W7 advertisement are different posts to the post held by the Petitioner, that Petitioner got no qualifications to hold any such posts and therefore, they can not be find fault with for making new appointments.

25. But the fact remains the Petitioner who was in the service of Respondents was removed from service only on the ground that funds were not available. If funds were not available no fresh appointments can be made. The grievance of the Petitioner is that Respondents are making new appointments. It is a fact that new appointments were made. Then there is no justification, in terminating the seravices of the Petitioner.

26. As to the third aspect is concerned, just because it is mentioned in the appointment order that without notice Petitioner's services can be terminated Respondents can not do as such since, the provisions of Sec.25(F) of the Industrial Disputes Act, 1947 provides for one month's notice, and payment of retrenchment compensation to the workmen who is retrenched. Thus, irrespective of the contents of the appoinment order given to the Petitioner who is a workman, Respondents are liable to give one months notice. In this case, sufficient notice has been given to the Petitioner, but evidently no retrenchment compensation has been given to him. On this ground also Ex.W4 order is not a maintenance order.

27. In view of the foregone discussion of the material on record it can safely be held that Ex.W4 the order passedby the 2nd Respondent terminating the services of the Petitioner is not maintainable nad it liable to be set aside.

This point is answered accordingly.

28. Point No. III: In view of the findings arrived at above, Ex.W4 order is liable to be set aside and Petitioner is entitled for reinstatement into service. Considering the fact that the Petitioner has approached the court belatedly, i.e., about 7 years after his removal from service, he is not entitled for any back wages, but he is entitled for continuity of service and other attendant benefits.

This point is answered accordingly.

29. Result:-

In the reasult, Petition is allowed. The impugned order dated 25.9.97 issued by the 2nd Respondent is hereby set aside. Petitioner shall be reinstated into service forth with. He is entitled for continuity of service and other attendant benefits except back wages.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 19th day of July, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri D. Venkata Ramana	MW1: Sri K. Srinivasa Rao MW2:Sri A. Giridhar

Documents marked for the Petitioner

Ex.W1: Photostat copy of Memorandum of Understanding dt. 19.7.1991

Ex.W2: Photostat copy of Ir.No1(1)/96-AE-1 dt.2.9.1997

Ex.W3: Photostat copy of appointment Ir. dt. 1.4.1996

Ex.W4: Photostat copy of Ir. dt.25.9.1997

Ex.W5: Photostat copy of order in WP Nos 7588/1988 & 35510/1998

Ex.W6: Photostat Copy of order of Hon'ble Supreme Court dt. 24.8.1998

Ex.W7: Photostat copy of Employment newspaper cutting dt. 23-29 March, 2002

Ex. W8 Photostat Copy of statement showing working staff in KVK, Zaheerabad as on February, 1998.

Documents marked for the Respondents

Ex.M1: Attested copy of memorandum of understanding between the Indian Council of Agricultural Research, Krishi Bhawan, New Delhi and the Deccan Krishi Vigyana Kendra dt. 19.7.1991

Ex.M2: Photostat copy of 1r. No.1(1)/96-AE-1 Dt. 26.5.1997

Ex.M3: Photostat copy of 1r. No.1(1)/96-AE-1 dt. 2.9.1997

Ex.M4: Office copy of 1r. dt. 25.9.1997 termination order.

नई दिल्ली, 15 जनवरी, 2014

का॰आ॰ 380.—कर्मचारी राज्य बीमा अधिनियम, 1948, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा **01** फरवरी, 2014 को उस तारीख के रूप में नियत करती है, जिनको उक्त अधिनियम के अध्याय-4(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा-(1) और धारा-77,78,79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध **छत्तीसगढ** राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

''तहसील अकलतरा जिला जांजगीर-चांपा में राजस्व ग्राम-अकलतरा खटोला, खिसोरा, बरगवां, लटिया, पकरिया, परसाहीनाला, कल्याणपुर, मुरलीडीह रोगदा, तरौद, किरारी, अमरलाल, खपरीडीह, खोंड, दरींटॉड, रसेडा, कोटगढ़ महमदपुर, पचरी, साजापाली, देवरी, कटनई, नरियरा के अन्तर्गत आने वाले क्षेत्र।''

[सं॰-एसं-38013/01/2014-एस॰एस॰1]
जार्जकुटी टी॰ एल॰, अवर सचिव

New Delhi, the 15th January, 2014

S.O. 380.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st February, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Chhattisgarh neamely:-

"Area falling within the revenue villages of Akaltara, khatola, Khisora, Bargawa Latiya, Pakariya, Parsahinala, kalyanpur, Murlidih, Rogada, Taroud, Kirari, Amartal, Khapridih, Khond, Darritand, Raseda, Kotgarh, Mahmadpur, Pachari, Sajapali, Dewari, Katnai and Nariyara in Tehsil-Akaltara, Dist-Janjgir-Champa."

[No. S-38013/01/2014-SS.I]
GEORGEKUTTY T.L., Under Secy.

आदेश

नई दिल्ली, 15 जनवरी, 2014

का॰आ॰ 381.—जबकि केन्द्रीय सरकार का यह मत है कि भारतीय खाद्य निगम के प्रबंधन एवं उनके कामगारों के मध्य एक औद्योगिक विवाद विद्यमान है:

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्रम मंत्रालय के दिनांक 08.07.2003 के आदेश संख्या एल-22012/28/2002-आईआर॰(सी-II) के द्वारा एक राष्ट्रीय औद्योगिक न्यायाधिकरण गठित किया जिसका मुख्यालय मुम्बई में रखा गया और न्यायमूर्ति श्री एस॰सी॰ पाण्डेय को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा-10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उपरोक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को सौंपा गया।

और जबकि न्यायमूर्ति श्री एस॰सी॰ पाण्डेय ने दिनांक 08.09.2004 को उपरोक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का पदभार छोड़ दिया।

और जबकि केन्द्र सरकार ने दिनांक 10.11.2005 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया तथा न्यायमूर्ति श्री घनश्याम दास को इसका पीठासीन अधिकारी नियुक्त किया;

और जबकि न्यायमूर्ति श्री घनश्याम दास ने दिनांक 06.02. 2006 को उपरोक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का पदभार छोड़ दिया।

और जबकि केन्द्र सरकार ने दिनांक 04.02.2011 के आदेश द्वारा राष्ट्रीय न्यायाधिकरण को पुनर्गठित किया तथ न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसका पीठासीन अधिकारी नियुक्त किया;

और जबकि न्यायमूर्ति श्री गौरी शंकर सर्राफ ने अपनी सेवानिवृत्ति पर उपरोक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का पदभार छोड़ दिया।

अत: अब एक राष्ट्रीय औद्योगिक न्यायाधिकरण की स्थापना की जाती है जिसका मुख्यालय मुम्बई में होगा और जिसके पीठासीन अधिकारी सीजीआईटी-सह-श्रम न्यायालय सं॰ 1 के पीठासीन अधिकारी, सत्यपूत मेहरोत्रा होंगे तथा उपर्युक्त विवाद को न्याय-निर्णयन के लिए राष्ट्रीय औद्योगिक न्यायाधिकरण को इस निर्देश के साथ संदर्भित किया जाता है कि न्यायमूर्ति श्री सत्यपूत मेहरोत्रा इस मामले में उस स्तर से आगे कार्रवाई करेंगे जहां से न्यायमूर्ति श्री गौरी शंकर सर्राफ ने इसे छोड़ा था तथा तद्नुसार इस मामले को निपटाएंगे।

[सं॰ एल-22012/28/2002-आई आर (सी-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

ORDER

New Delhi, the 15th January, 2014

S.O. 381.—Whereas the Central Govt. is of the opinion that an industrial dispute existed between the management of FCI and their workmen:

And Whereas the industrial dispute involves question of national importance and also is of such nature that establishments of Food Corporation of India located in more than one state are likely to be interested in or affected;

And Whereas the Central Government in exercise of the powers conferred by Section 7 B of the I.D. Act, 1947 (14 of 1997) constituted a National Industrial Tribunal *vide* Ministry of Labour Order No. L-22012/28/2002-IR(C-II) dated 8.7.2003 with headquarters at Mumbai and appointed Justice Shri S.C. Pandey as its Presiding Officer and exercise of the powers conferred by sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And Whereas Justice Shri S.C. Pandey relinquished charge of the above National Industrual Tribunal on 8.9.2004;

And Whereas Central Government *vide* order dated 10.11.2005 reconstituted the National Tribunal and appointed Justice Shri Ghanshyam Dass as its Presiding Officer;

And Whereas Justice Shri Ghanshyam Dass relinquished the charge of the said National Industrial Tribunal on 06.02.2006;

And Whereas Central Government *vide* order dated 04.02.2011 reconstituted the National Tribunal and appointed Justice Shri Gauri Shanker Sarraf as its Presiding Officer;

And Whereas Justice Gauri Shanker Sarraf relinquished the charge of the said National Industrial Tribunal on his retirement;

New therefor, a National Industrial Tribunal is constituted with Headquarters at Mumbai with Justice Shri Satya Poot Mehrotra, Presiding Officer of CGIT-cum Labour Court No. 1 Mumbai as its Presiding Officer and the above said dispute is referred to the said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shanker Sarraf and dispose of the same accordingly.

[No. L-22012/28/2002-IR(C-II)]
B.M. PATNAIK, Desk Officer

नई दिल्ली, 16 जनवरी, 2014

का॰आ॰ 382.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजिंग डायरेक्टर प्रजा टूल्स लिमिटेड सिकंदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 23/2005, 24, 2005, 25, 2005, 26, 2005, 27, 2005, 29, 2005, 32/2005, 31/2005, 32/2005, 33/2005, 34, 2005, 35/2005, 36/2005, 54/2005, 55/2005, 56/2005, 57/2005, 58/2005, 59/2005, 60/2005, 61/2005, 62/2005, 63/2005, 64/2005, 65/2005, 80/2005, 81/2005, 82/2005, 83/2005, 84/2005, 85/2005, 86/2005, 87/2005, 88/2005, 89/2005, 90/2005, 91/2005, 92/2005, 94/2005, 100/2005, 101/2005, 111/2005, 112/2005, 113/2005, 132/2005, 80/2006, 81/2006, 154/2006, 155/2005, 159/2006, 160/2006, 19/2007, 39/2007, 40/2007, 41/2007, 88/2007, 89/2007, 90/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 16th January, 2014

S.O. 382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947)] the Central Government hereby publishes the award (I.D. No. 23/2005, 24, 2005, 25, 2005, 26, 2005, 27, 2005, 29,2005, 30/2005, 31/2005, 32/2005, 33/2005, 34, 2005 35/2005, 36/2005, 54/2005, 55/2005, 56/2005, 57/2005, 58/2005, 59/2005, 60/2005, 61/2005, 62/2005, 63/2005, 64/2005, 65/2005, 80/2005, 81/2005, 82/2005, 83/2005, 84/2005, 85/2005, 86/2005, 87/2005, 88/2005, 89/2005, 90/2005, 91/2005, 92/2005, 94/2005, 100/2005,

101/2005, 111/2005, 112/2005, 113/2005, 132/2005, 80/2006, 81/2006, 154/2006, 155/2006, 159/2006, 160/2006, 19/2007, 39/2007, 40/2007, 41/2007, 88/2007, 89/2007, 90/2007) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Managing Director, Praga Tools Limited, Secunderabad and their workmen, which was received by the Central Government on 10/01/2014.

[No. L-42012/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 24th day of October, 2013

Industrial Disputes LC Nos.

23/2005, 24/2005, 25/2005, 26/2005, 27/2005, 29/2005, 30/2005, 31/2005, 32/2005, 33/2005, 34/2005, 35/2005, 36/2005, 54/2005, 55/2005, 56/2005, 57/2005, 58/2005, 59/2005, 60/2005, 61/2005, 62/2005, 63/2005, 64/2005, 65/2005, 80/2005, 81/2005, 82/2005, 83/2005, 84/2005, 85/2005, 86/2005, 87/2005, 88/2005, 89/2005, 90/2005, 91/2005, 92/2005, 94/2005, 100/2005, 101/2005, 111/2005, 112/2005, 113/2005, 132/2005, 80/2006, 81/2006, 154/2006, 155/2006, 159/2006, 160/2006, 19/2007, 39/2007, 40/2007, 41/2007, 88/2007, 89/2007 and 90/2007.

Between :

1. **LC 23 of 2005**
   Sri K. Ashok Kumar
   S/o K. Rajamalu
   H.No. 6-4-462/1, Krishnanagar Colony,
   Bholakpur Secunderabad-80.

2. **LC 24 of 2005**
   Sri V. Amarnath
   S/o M. Vishnu
   H.No. 4, Block No.7, New Boiguda,
   IDH Colony, Secunderabad-80

3. **LC 25 of 2005**
   Smt. A. Kalavathi
   W/o Late A. Kumar
   2-39/2/B, GoodShed Road,
   Moosapet, Hyderabad-18

4. **LC 26 of 2005**
   Sri P. Veeramani
   S/o P. Manikyam
   H.No. 13-66 IG Naga, Hyderabad-37

5. **LC 27 of 2005**
   Sri E. Shankar
   S/o Late E. Rajaiah
   Forge & Foundry Division,
   Praga Tools, Secunderabad-80

6. **LC 33 of 2005**
   Sri G. Raji Reddy
   S/o G. Buchi Reddy
   Forge & Foundry Division,
   Praga Tools, Secunderabad-80

7. **LC 34 of 2005**
   Sri A. Venkatesh
   S/o Late A. Balaiah
   Forge & Foundry Division,
   Praga Tools, Secunderabad-80

8. **LC 35 2005**
   Sri K. Shankar
   S/o K. Lachaiah
   Forge & Foundry Division,
   Praga Tools, Secunderabad-80

9. **LC 80 of 2005**
   Sri Aziz Mohammad
   S/o Zaheer Mohammad
   SRT. 596, Sanath Nagar,
   Hyderabad-18.

10. **LC 81 of 2005**
    Sri A. Rajan
    S/o Andrews Cooper
    H.No. 15-24, Gurumurthynagar,
    Balanagar, Hyderabad-37.

11. **LC 94 of 2005**
    Sri M. Sriniwas
    S/o M. Dharmaraj
    H.No. 12-11-1134, Boudhanagar,
    Warasiguda, Secunderabad

12. **LC 100 of 2005**
    Sri R. Ramesh Kumar
    S/o Gopal Rao Rajbhure
    H.No. 114, Tarbund, Secunderabad

13. **LC 101 of 2005**
    Sri B. Ram Prasad
    S/o B Mohan Rao
    Dundiralapadu, P.O : Gampalagudem
    Mandal, Krishna District.

14. **LC 111 of 2005**
    Sri A. Sriniwasa Rao
    S/o Late A. Anjaneyulu
    C-35, SBH Colony,
    Saidabad, Hyderabad

15. **LC 112 of 2005**
Sri V. Narsing Rao
S/o Late V. Linagam
R/o Bholakpur, Secunderabad

16. **LC 113 of 2005**
Sri M. Armstrong
S/o Late M. Mariandass,
Machine Tools Divisions,
Praga Tools, Secunderabad-80

17. **LC 154 of 2006**
Smt. A. Lakshmi Saraswathi
W/o Late AVM Krishna Rao
Flat No. 132, 3rd Block,
Prajay City Apts., Miyapur,
Hyderabad-49.

18. **LC 159 of 2006**
Sri Andrews mario
S/o Late H. Sebastian
Machine Tools Division,
Praga Tools, Secunderabad-80

19. **LC 160 of 2006**
Sri E. Sriniwas
S/o E. Mysaiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80

20. **LC 19 of 2007**
Smt. B. Venkatamma
W/o Late B. Yellaiah
1-1-538/25, Gandhinagar,
Musheerabad, Hyderabad-80.

21. **LC 39 of 2007**
Sri M. Durgadas Reddy
S/o M. Sundar Reddy
1-7-505/1, Bakaram,
Musheerabad, Hyderabad-84.

22. **LC 40 of 2007**
Sri S. Srikanth Singh
S/o Late S. Satyanarayana Singh
9-3-739/1 & 2, Regimental Bazar,
Secunderabad-3.

23. **LC 41 of 2007**
Sri Abdul Majeed
S/o Late Abdul Razak
H.No. K-43- Ist Phase, HUDA,
Borabanda Colony, Hyderabad-18.

24. **LC 88 of 2007**
Sri P. Gangadhara Reddy
S/o P. Aswartha Reddy
4-8-85/1/A, Manjeeranagar,
Sangareddy, Medak District.

25. **LC 89 of 2007**
Sri A. Mastanvali
S/o Late A. Immam Sahib
H.No. 1-5-144, Jamistanpur,
Musheerabad, Hyderabad

26. **LC 90 of 2007**
Sri P. Nagesh
S/o Late P. Narasimha
6-5-267, Chacha Nehrunagar,
New Boiguda, Secunderabad-80

....Petitioners

AND

The Managing Director,
M/s. Praga Tools Limited,
6-6-8/32, Kavadiguda Road,
Secunderabad-500 80.

....Respondent

Appearances:

For the Petitioners : M/s. S. Prasada Rao, Advocates in LC Nos. 80/2005 & 81/2005

M/s. B.G. Ravindra Reddy, P. Srinivasulu & B.V. Chandra Sekhar, Advocates in all other 56 cases except LC Nos. 80/2005 & 81/2005

For the Respondent : M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates

27. **LC 29 of 2005**
Sri Abdul Hameed, S/o Abdul Kareem
Forege & Foundry Division,
Prga Tools, Secunderabad-80.

28. **LC 30 of 2005**
Sri T. Venkateswara Rao, S/o T. Laxman
Machine Tools Divisions,
Praga Tools, Secunderabad-80.

29. **LC 31 of 2005**
Sri K.V. Srinivas, S/o K Venkata Swamy
Machine Tools Division,
Praga Tools, Secunderabad-80

30. **LC 32 of 2005**
Sri M. Rajkumar, S/o Late M. Mallaiah
Machine Tools Division,
Praga Tools, Secunderabad-80

31. **LC 36 of 2005**
Sri V. Chandrasekhar, S/o Late V. Chittaiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

32. **LC 54 of 2005**
Sri A. Venkatesh,
S/o Late A Mallesh
Machine Tools Division,
Praga Tools, Secunderabad-80

33. **LC 55 of 2005**
Sri R. Yesu Babu,
S/o R. Appa Rao
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

34. **LC 56 of 2005**
Sri Ch. Jagannadham,
S/o Ch. Narayana
CNC Division, Praga Tools,
Secunderabad-80.

35. **LC 57 of 2005**
Sri E. Veera Reddy,
S/o Late EC Veera Reddy
CNC Division, Praga Tools,
Secunderabad-80.

36. **LC 58 of 2005**
Sri K. Murali,
S/o Late K. Padmaiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

37. **LC 59 of 2005**
Sri Y. Sudhakar,
S/o Y.A. Ramulu
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

38. **LC 60 of 2005**
Smt. Mathangi Satyamma,
W/o Late M. Jayaprakash
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

39. **LC 61 of 2005**
Sri G. Raj Kumar,
S/o G. Gopala Rao
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

40. **LC 62 of 2005**
Sri G. Nageswara Rao,
S/o G. Appa Rao
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

41. **LC 63 of 2005**
Sri Shanthilal,
S/o Late Bahadur
Machine Tools Division,
Praga Tools, Secunderabad-80.

42. **LC 64 of 2005**
Smt. Paladi Deepika,
W/o Late P. Susheel Kumar
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

43. **LC 65 of 2005**
Sri K. Pratap,
S/o Late K. Shanakaraiah
Forege & Foundry Division,
Praga Tools, Secunderabad-80.

44. **LC 80 of 2006**
Sri D. Venkata Ramana,
S/o D. Narayana
H.No. 2-10-10, Nallagutta,
Piler (Post, PS & Mandal),
Chittoor District

45. **LC 81 of 2006**
Sri A. Julious,
S/o Late V.P. Anthony
Machine Tools Division,
Praga Tools, Secunderabad-80.

46. **LC 82 of 2005**
Sri T. Gopi,
S/o Late Tella Pentaiah
Machine Tools Division,
Praga Tools, Secunderabad-80.

47. **LC 83 of 2005**
Sri T. Sridhar,
S/o Late T. Narasimha
Machine Tools Division,
Praga Tools, Secunderabad-80.

48. **LC 84 of 2005**
Sri B. Srinivas,
S/o Late B. Gouraiah
Forge & Foundry Division,
Praga Tools,Secunderabad-80.

49. **LC 85 of 2005**
Sri D. Naresh,
S/o Late D. Jaswanth Rao
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

50. **LC 86 of 2005**
Sri T.K. Ravinder,
S/o T. Butchama Chary
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

51. **LC 87 of 2005**
Sri B. Nagaraju, S/o Late B. Shankaraiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

52. **LC 88 of 2005**
Sri P. Siddi Ramulu, S/o Kistaiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

53. **LC 89 of 2005**
Sri M Satyanarayana, S/o Late M Pandu
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

54. **LC 90 of 2005**
Sri M. Lokesh Kumar, S/o M Koteswara Rao
Machine Tools Division,
Praga Tools, Secunderabad-80.

55. **LC 91 of 2005**
Sri G Mohan Rao, S/o Late G Komaraiah
Machine Tools Division, Praga Tools,
Secunderabad-80.

56. **LC 92 of 2005**
Sri SVGK Muralidhar, S/o S V Krisha Rao
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

57. **LC 132 of 2005**
Sri T Dasarath, S/o Late D Pentaiah
Forge & Foundry Division,
Praga Tools, Secunderabad-80.

58. **LC 155 of 2006**
Sri P Anjan Prasad, S/o Late P Narasaiah
H.No. 12-10-590/64, Warasiguda,
Secunderabad ....Petitioners

AND

1. The Managing Director,
M/s. Praga Tools Limited,
6-6-8/32, Kavadiguda Road,
Secunderabad-80.

2. Union of India, rep. by its Secretary,
Min. of Heavy Industries and Public Enterprises,
Dept. of Public Enterprises, Block No. 14,
CGO Complex, New Delhi-110003.
....Respondents

Appearances:

For the Petitioners: M/s. B.G. Ravindra Reddy, P. Srinivasulu & B.V. Chandra Sekhar, Advocates

For the Respondent: M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates

AWARD

These industrial disputes have been raised by 58 Petitioners by way of filing individual applications invoking Sec. 2A(2) of Industrial Disputes Act, 1947 questioning the legality and justification of the action of the respondent company in terminating the services of 58 Petitioners listed above in cause title. For Petitioners, M/s. S. Prasada Rao, Advocates have appeared in LC Nos. 80/2005 & 81/2005 and M/s. B.G. Ravindra Reddy, P. Srinivasulu & B.V. Chandra Sekhar, Advocates have appeared in all other 56 cases. M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates have appeared for Respondents. Though Petitioners have filed individual applications, as the cause of action, condition and status etc., involved in all the these industrial disputes are one and the same, for easy disposal and for convenience sake all these cases viz., LC Nos. 23/2005, 24/2005, 25/2005, 26/2005, 27/2005, 29/2005, 30/2005, 31/2005, 32/2005, 33/2005, 34/2005, 35/2005, 36/2005, 54/2005, 55/2005, 56/2005, 57/2005, 58/2005, 59/2005, 60/2005, 61/2005, 62/2005, 63/2005, 64/2005, 65/2005, 80/2005, 81/2005, 82/2005, 83/2005, 84/2005, 85/2005, 86/2005, 87/2005, 88/2005, 89/2005, 90/2005, 91/2005, 92/2005, 94/2005, 100/2005, 101/2005, 111/2005, 112/2005, 113/2005, 132/2005, 80/2006, 81/2006, 154/2006, 155/2006, 159/2006, 160/2006, 19/2007, 39/2007, 40/2007, 41/2007, 88/2007, 89/2007 and 90/2007 are being disposed off vide a COMMON AWARD.

2. The brief averments made in the petitions are as follows:

All the Petitioners were appointed as helpers/fitters/turners/electricians/clerk/welders etc., on casual basis and got terminated as per the details given below:—

Sl. No	Case	No	Year	Petitioner	Date of		Employment status	
					Joining	Termination	In Praga Tools	After disengagement
1	2	3	4	5	6	7	8	9
1	LC	23	2005	K Ashok Kumar	08/01/86	01/11/01	Helper	unemployed
2	LC	24	2005	V Amarnath	28/12/85	01/11/01	Helper	Painter
3	LC	25	2005	A Kalavathi	21/09/89	01/11/01	Helper	unemployed
4	LC	26	2005	P Veeramani	21/01/86	01/11/01	Helper	unemployed
5	LC	27	2005	E Shankar	05/12/85	01/11/01	Helper	Goat Care
6	LC	29	2005	Abdul Hameed	06/01/87	22/05/04	Fitter	Hamali work

1	2	3	4	5	6	7	8	9
7	LC	30	2005	T Venkatewsara Rao	05/10/95	01/11/01	Turner	Hamali work
8	LC	31	2005	KV Srinivas	18/11/95	01/11/01	Fitter	Carpenter Helper
9	LC	32	2005	M Rajkumar	16/10/95	01/11/01	Fitter	Pan shop worker
10	LC	33	2005	G Raji Reddy	06/02/86	01/11/01	Helper	Painter
11	LC	34	2005	A Venkatesh	26/12/85	01/11/01	Helper	unemployed
12	LC	35	2005	K Shankar	19/12/85	01/11/01	Helper	coolie
13	LC	36	2005	V. Chandrasekhar	18/12/85	01/11/01	Helper	unemployed
14	LC	54	2005	A Venkatesh	18/08/88	01/11/01	Clerk	unemployed
15	LC	55	2005	R Yesu Babu	21/07/88	01/11/01	Fitter	unemployed
16	LC	56	2005	Ch. Jagannadham	22/08/89	01/11/01	Electrician	unemployed
17	LC	57	2005	E Veera Reddy	23/11/88	01/11/01	Electrician	Helper Electrician
18	LC	58	2005	K Murali	20/05/86	01/11/01	Helper	unemployed
19	LC	59	2005	Y Sudhakar	16/07/86	01/11/01	Helper	unemployed
20	LC	60	2005	Mathangi Satyamma	12/09/91	01/11/01	Helper	unemployed
21	LC	61	2005	G Raj Kumar	05/03/86	01/11/01	Helper	Painter
22	LC	62	2005	G Nageswara Rao	21/09/88	01/11/01	Fitter	Painter & Electrician
23	LC	63	2005	Shanthilal	10/10/93	1/6/2002	Helper	Painter
24	LC	64	2005	Paladi Deepika	15/06/96	01/11/01	Helper	unemployed
25	LC	65	2005	K Pratap	03/10/91	01/11/01	Fitter	unemployed
26	LC	80	2005	Aziz Mohammad	28/02/84	24/03/05	casual labour	unemployed
27	LC	81	2005	A Rajan	03/01/81	25/03/05	casual labour	unemployed
28	LC	82	2005	T Gopi	08/07/80	15/04/88	Helper	unemployed
29	LC	83	2005	T Sridhar	01/10/87	01/11/01	Helper	unemployed
30	LC	84	2005	B Srinivas	20/04/86	15/04/92	Helper	Worker in Cycle shop
31	LC	85	2005	D Naresh	02/06/87	01/11/01	Helper	unemployed
32	LC	86	2005	T K Ravinder	15/02/89	01/11/01	Casual Clerk	unemployed
33	LC	87	2005	B Nagaraju	21/01/90	01/11/01	Casual Time Clerk	unemployed
34	LC	88	2005	P Siddi Ramulu	21/09/88	01/11/01	Fitter	Hamali work
35	LC	89	2005	M Satyanarayana	08/07/87	10/11/01	Helper	Mason's work
36	LC	90	2005	M. Lokesh Kumar	21/09/85	01/11/01	Helper	Unemployed
37	LC	91	2005	G Mohan Rao	22/09/88	01/11/01	Miller	To be asked
38	LC	92	2005	SVGK Muralidhar	02/01/88	01/08/98	Clerk	unemployed
39	LC	94	2005	M Srinivas	03/07/86	31/12/03	Casual mazdoor	Hamali work
40	LC	100	2005	R Ramesh Kumar	27/08/87	01/11/01	Helper	unemployed
41	LC	101	2005	B Ram Prasad	01/09/87	31/03/03	Fitter	Fitter
42	LC	111	2005	A Srinivasa Rao	06/05/88	08/06/05	Clerk cum Typist	unemployed
43	LC	112	2005	V Narsing Rao	14/06/91	01/11/01	Casual mazdoor	Painter

1	2	3	4	5	6	7	8	9
44	LC	113	2005	M Armstrong	14/07/91	01/11/01	Helper	unemployed
45	LC	132	2005	T Dasarath	20/03/81	01/04/86	Helper	unemployed
46	LC	80	2006	D Venkata Ramana	12/02/86	01/11/01	Helper	unemployed
47	LC	81	2006	A Julious	17/04/86	01/11/01	Helper	unemployed
48	LC	154	2006	A Lakshmi Saraswathi	17/05/88	01/11/01	Clerk	unemployed
49	LC	155	2006	P Anjan Prasad	18/10/84	18/07/05	Helper	unemployed
50	LC	159	2006	Andrews mario	05/08/88	01/11/01	Welder cum Fitter	unemployed
51	LC	160	2006	E Srinivas	29/04/86	01/11/01	Helper	unemployed
52	LC	19	2007	B Venkatamma	21/01/93	01/11/01	Helper	Unemployed
53	LC	39	2007	M Durgadas Reddy	15/04/86	01/11/01	Helper	Unemployed
54	LC	40	2007	S Srikanth Singh	23/06/86	01/11/01	Helper	Worker in Tak Couriers
55	LC	41	2007	Abdul Majeed	01/12/87	01/05/95	Electrician	unemployed
56	LC	88	2007	P Gangadhara Reddy	15/04/86	15/06/96	Auto Mechanic	unemployed
57	LC	89	2007	A Mastanvali	12/03/86	01/04/05	Blacksmith Cum Fitter	unemployed
58	LC	90	2007	P Nagesh	24/04/86	01/11/01	Helper	Hamali work

They were not issued with written appointment order. But they were given casual employment ticket and time card by their employer. They were covered under ESIC, EPF and Bonus Act etc. They were issued with identity cards. The Respondents were to deduct contributions towards EPF and ESIC schemes, from their wages. They worked for more than 240 working days prior to their termination from services, during the preceding year. Besides, they also completed 240 working days of work in all the previous years in the respondent company. Further, they worked for extra hours after their normal working hours on some days. They worked on weekly off days, public holidays and national holidays also. They worked on weekly off days, public holidays and national holidays also. But, their employer never used to pay wages for the work done on such public holidays and national holidays as they will be paying to the regular workmen for such work, which is discriminatory. Since, their appointment Petitioners worked continuously without any break in service and without any complaints whatsoever and to the satisfaction of their superiors. While so, they were not allowed to perform their duties without any written termination order, without giving any reason for termination. Thereafter, Petitioners approached the respondent company several times and also through their union requesting for their reinstatement into service without any response. Petitioners also sent written representations requesting for their reinstatement into service. Though they received the same, no reply was given and no action was taken. Having no other alternative Petitioners filed this petition. The termination of the Petitioners from service is illegal and unjustified. No notice was given to the Petitioners prior to their termination from service. No retrenchment compensation has been paid. There are more than 500 workmen employed in the respondent company, Hence, it is covered under Chapter V(B) of the Industrial Disputes Act, 1947 and Sec. 25N of the said act applies. Permission from the appropriate government is a precondition for any termination/retrenchment of workmen. But respondent company has not obtained any such permission. Some of the casual workers who were appointed much later to the Petitioners have been appointed to regular posts ignoring the seniority of the Petitioners which is illegal and discriminatory. Further, some of the casual workers who were appointed much later to ihe Petitioners were continued in service whereas Petitioners have been terminated from service, which is illegal and discriminatory. The termination of the Petitioners from service is illegal, invalid and in violation of Sec. 25F. 25N, 25G and 25H of lndustrial Disputes Act, 1947, Therefore, Petitioners are entitled for reinstatement into service with full back wages, continuity of service and all other attendant benefits.

3. First Respondent filed their counter with the averments in brief as follows:

These petitions are not maintainable under Sec.2A(2) of the Industrial Disputes ACT, 1947. Respondent company is a public sector undertaking controlled and regulated initially by Ministry of Defence and later by Government of India. It is regulated by the policy decisions of the Ministry of Heavy Industry. As per its man power planning in various categories permanent employees were recruited as per the established recruitment procedure for the public employment. Employment in the respondent company is public employment and there should be sanctioned posts and Management have to take policy decisions in this regard basing on the work load and its financial capacity. Only then, it can set in motion the recruitment procedure. It has to notify the vacancies in employment exchange and also it has to give wide publicity by giving the eligibility criteria required for a particular post and the selection committee has to be constituted for selecting the candidates after receiving the applications from the candidates. A short list of the candidates who are eligible for interview is to be prepared and they are to be interviewed and thereafter as per the merit the candidates are to be selected. The antecedents of the selected candidates are to be verified and applying the reservation policy roaster list is to be prepared and then appointments are to be made on probation. No person is entitled for the back door method of appointment as demanded by the Petitioners by way of this industrial dispute.

There are no permanent vacancies to appoint or post the casuals in said vacancies or to regularise their services. Respondent company became sick and it could not run and reach the stage that it has no financial capacity to pay the wages to the permanent staff. In addition of sickness, unauthorized absenteeism resulted in taking casuals to carry out some skilled, semi-skilled and unskilled works as on that day's peculiar circumstances prevailing. These casuals are not discharging all the duties of the permanent employees much less held responsible for production work are fastened with any sort of responsibility. No duty is cast on the casuals to attend daily. When there were urgent need on certain dates some routine and unskilled jobs which were not directly related to productions were assigned to casuals and they were paid minimum wages as applicable to them. Because of the acclimatization the work culture and environment the casuals knowing the area of job were opted in the event of casual vacancies arise. Due to unforeseen absenteeism in various departments every day and the load of work, various department officials used to make requisitions for the man power to do certain jobs. So the managerial staff used to go to the gate and assign the said work to the casuals who were waiting at the gate offering their services, thus, the Petitioners and other persons were engaged as casuals. The job of the casual ends by day. Such services will not give any legal right. Except to consider their case on par with others at the time of available sanctioned vacancies arise subject to the candidates satisfy the requisite qualifications and stipulations. Since, there is no man power requirement at all, question of implementing any settlement arrived at by the respondent Management with the employees union does not arise. Since some of the casuals approached the High Court and they were provided with employment, though there were no vacancies in view of the directions given by the said court. That can not be a ground to seek for regularization in public employment by back door methods public employment can not be given as it will be in violation of the mandate of the constitution and all public policies. The allegation that Petitioners were appointed in the Forge And Foundry Division or Machine Tools Division as casual workers and since then they have discharged their duties continuously, without complaints and to the satisfaction to their superiors is not a correct fact. They were not appointed in any regular or permanent vacancy. They are to be put to strict proof regarding their contentions. Even otherwise being casuals they have not vested right to make claim for permanent employment because of their disengagement. This can not be treated by any stretch of imagination as termination without any order. All the casual employees including the Petitioners were paid the wages for the actual number of days they were engaged as per labour laws and the respondent Management complied all the statutory obligations at the time of payment of wages including P.F. and E.S.I. as the case may be. Petitioners also were paid wages after the statutory deductions of P.F. and E.S.I. and were communicated as they were covered under both these acts. For the purpose of identification and maintenance of time if respondent company provides ticket number and time card will not give rise to any right to seek for permanent post in the Respondent company. Petitioners are to be put to strict proof regarding their contention that they were paid Rs. 5100/- per month towards wages as on the date of their oral termination from duty. Petitioners' case is not a case of termination basing on the exigencies of work the jobs were provided. It will not give any right to raise an industrial dispute. Petitioners are to be put to strict proof that they worked for more than 240 days prior to their termination from service and also in previous years. There are false contentions. There is no violation of any of the provisions of Industrial Disputes Act, 1947 on the part of the respondent. Nature of the job allocated to various persons mentioned in the petitions and the same actually allocated to the Petitioners are different. The facts and circumstances in the year 1991 are totally different because of the contempt proceedings filed before the court some Petitioners were given appointment orders though there were no vacancies. The same can not be cited as a precedent and it can not be claimed that there is discrimination. Petitioners can not claim for reinstatement into service with full back wages and continuity of service with all attendant benefits. Even otherwise Petitioners are

not entitled for any of the reliefs sought for. Petitions are liable to be dismissed.

4. 2nd Respondent filed a memo adopting the counter filed by the first Respondent in the relevant disputes.

5. To substantiate the contentions of the Petitioners, Petitioners were examined as WW1 in their respective cases exhibits were marked. On behalf of the Respondent Management MWl was examined and Ex.Ml to M7 were marked.

6. Heard the arguments of either party.

7. The points that arise for determination are:

(I) Whether the Petitioners are entitled for reinstatement into service as casual workers?

(II) Whether the Petitioners are entitled for the reliefs of payment of full back wages, continuity of service and other attendant benefits?

8. Point No 1:

It is the contention of the Petitioners that they have been working as a casual workers with the first Respondent company since their appointment continuously, receiving wages and further that Respondent company has been deducting amounts from their wages each month for subscribing the same for Provident Fund and for Employees State Insurance, as Petitioners were covered by the same. Whereas in their counter Respondent company made an effort to deny the truth of the contention of the Petitioners that they have been working continuously as casual workers with the Respondent company from their respective date of appointment but, they have not denied the truth of the contention of the Petitioners that Petitioners have been working as casual workers with them. Thus, it is their contention that Petitioners though worked as casual workers for them, Petitioners have not been working with them regularly.

9. Whereas, the Assistant General Manager(HRM) of the Respondent company who has been examined as MWl in these cases, has admitted that deductions were made from the wages of the Petitioners and other casual workers each and every month, for making contribution to the provident fnnd and ESI and for such deductions registers were maintained and signatures of the Petitioners and other such casual workers were obtained in the said registers. That means, regularly for each and every month wages were being paid to the Petitioners and other such workers, while so, deductions were being made from the said wages for making contributions to PF and ESI. Thus, it is a regular procedure which indicates that Petitioners and other such workers worked for the Respondent company continuously, but as casual workers.

10. MWl admitted that there were registers maintained by ihc Respondent company for the deductions from the wages made for contributing to PF and ESI. If such registers are produced before the court it would have been possible for the court to verify the date from which such deductions were made in respect of the Petitioners. But such registers were not produced before the court. Therefore, an Inference is to be drawn that since the contention of the Respondent company that Petitioners have not been working continuously from their date of joining is not correct and as they are apprehending that if such registers are produced before the court the truth will come out, such registers are not produced. In the given circumstances it can safely be concluded that Petitioners have been working for the first Respondent as casual worker continuously from the date of appointment.

11. It is an admitted fact, as can be seen from the contentions of the Respondents which can be gathered from their counter and the evidence of the MW1, that Petitioners have been disengaged from service by not allowing them to perform their duties since that date. It amounts to termination of their service only. Certainly they have worked for more than 240 working days continuously prior to the said date of termination of their service. Petitioners have been in service with the Respondent company for about 24 years. But, they have not been issued with any written notice informing them of the factum of termination of their service much less assigning reasons for such termination. Petitioner have not been paid any retrenchment compensation either, admittedly. It is the explanation given by MW1 for such conduct that Petitioners were not regular workers. This explanation is not at all acceptable.

12. Petitioners will certainly come under the purview of the definition of workmen as contemplated by the Indusirial Disputes Act. 1947. Therefore, they are entitled for all the benefits which are provided for in the said Act. It is not in dispute that Chapter V (B) of Industrial Disputes Act 1947 applies to the 1st Respondent company. Thus, in case of termination of Petitioners' services by the employer, they as well as the employer will be governed by Sec.25N of the Industrial Disputes Act, 1947. Sec.25N(I) reads as follows:

"25-N. Conditions precedent to retrenchment of workmen:— (1) No workman employed in any industrial establishment to which this Chapter applies, who have been in continuous service for not Less than one year under an employer shall be retrenched by that employer until—

(a) the workman have been given three months' notice in writing indicating the reasons for retrenchment and the period of notice have expired, or the workman have been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that

Government by notification in the Official Gazette (hereafter in this Section referred to as the specified authority) have been obtained on an application made in this behalf."

Whereas in the present case admittedly. Respondent has neither issued the three months notice nor has paid the wages in lieu of such notice. They have not obtained permission of the appropriate government for terminating the services of the workmen. They have not paid the retrenchment compensation provided for in Sec. 25N (9) of the Industrial Disputes Act. 1947 either. In the given circumstances termination of the Petitioners is certainly illegal and unjustified as rightly contended for by the Petitioners.

13. Further more, the material on record discloses that some of the casual workers who were working along-with the Petitioners and whose services were also terminated approached Hon'ble High Court of A.P. and Hon'ble High Court has directed the Respondent company to reinstate them into service and also to consider the regularization of their services if such schemes are available. The order dated 14.6.2007 rendered by Hon'ble High Court of A.P. in WP No. 20241 of 2005 shows that such an order has been passed. Evidence of MW1 clarifies that such an order has been implemented. Though Petitioners are standing on the same footing as the Petitioners in the said writ petition, their contentions were not considered by the first Respondent though they made representations to them time and again.

14. A plea has been put forth for the Respondent company that there is no sufficient work load enabling them to engage casual workers. But the evidence of MW1 clarifies that even now first Respondent is employing casual workers and some of them were engaged by the first Respondent much subsequent to the date of engagement of the Petitioners and they are still continuing to work for the Respondent.

15. Thus, there is clear violation of the provisions of Sections 25G and 25H of Industrial Disputes Act, 1947 on the part of the Respondent company.

16. The evidence on record clearly shows that though Respondent company is a public sector undertaking controlled and regulated by the Government of India, the Management of the said company is committing several irregularities and illegalities by employing several casual workers paying substantially less remuneration than the amount which they are paying to the regular workers though they are extracting substantial work from the said casual workers. But it is not relevant to the dispute on hand. Now the question to be decided is not regarding regularization of any casual workers. The dispute on hand is regarding the legality or otherwise of the termination of the services of the Petitioners. It is already held above that said termination is neither legal nor justified for the reasons discussed above. In the given circumstances, various contentions raised for the Respondents in connection with public employment and methods of public employment need not be gone into as they are irrelevant here.

17. It is a well established position of law that when there is illegal termination of service of the workman by the employer in violation of Sec. 25F or Sec. 25N of Industrial Disputes Act, 1947 the only course opened to correct the situation is reinstatement of the said workman into service. Therefore, the Petitioners are entitled for reinstatement into service.

This point is answered accordingly.

18. Point No. II:

As can be gathered from the evidence of the Petitioners as WW1 some of them are working as painters, electricians, coolies, hamalies and helpers etc., and some of them are unemployed since the date of their disengagement. Thus, some of them have suffered financially due to abrupt termination of their services by their employer M/s. Praga Tools Limited. But also considering the fact, that as per the evidence on record, first Respondent is also not doing well financially and therefore awarding full back wages to the Petitioners is not prudent thing to do, reasonable compensation is to be awarded to the Petitioners by the Respondent company *i.e.*, M/s. Praga Tools Limited. Awarding of Rs. 10,000 towards compensation to each of the Petitioners from the first Respondent for the illegal and unjustified termination of their services, is reasonable.

19. Further, Petitioners are entitled for continuity of service by restoring their seniority and they are entitled for other attendant benefits as well,

This point is answered accordingly.

Result:

20. In the result, all the 58 petitions mentioned in cause title are allowed The action of the Respondent company i.e., M/s. Praga Tools Limited in terminating the services of the Petitioners is held as illegal and unjustified and it is set aside. Petitioners shall be reinstated into service forthwith as casual workers with continuity of service and other attendant benefits. Respondent company shall pay an amount of Rs. l0,000 (Rupees ten thousand only) to each of the Petitioners in the 58 Petitions (as per cause title) towards compensation for the illegal termination of the services of the Petitioners, forthwith.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 24th day of October 2013.

M. V1JAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioners	Witnesses examined for the Respondent
WW1: 58 Petitioners as per cause titled	MW1: Sri N. Babu Rao

Documents marked for the Petitioners

1. **LC 23 of 2005**
   Ex. W 1: Representation
   Ex. W 2: Ack. Card
   Ex. W 3: EPF slip
   Ex. W 4: Agreement
   Ex. W 5: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 6: Seniority list
   Ex. W 7: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

2. **LC 24 of 2005**
   Ex. W 1: EPF slip
   Ex. W 2: Representation
   Ex. W 3: ID Card
   Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 5: Seniority list
   Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

3. **LC 25 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 4.6.07

4. **LC 26 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

5. **LC 27 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

6. **LC 29 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

7. **LC 30 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

8. **LC 31 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

9. **LC 32 of 2005**
   Ex. W 1: ESI Card
   Ex. W 2: EPF slip
   Ex. W 3: Representation
   Ex. W 4: Postal receipt
   Ex. W 5: Acknowledgement card
   Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
   Ex. W 7: Seniority list
   Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

10. **LC 33 of 2005**
    Ex. W 1: ESI Card
    Ex. W 2: EPF slip
    Ex. W 3: Representation
    Ex. W 4: Postal receipt
    Ex. W 5: Acknowledgement card
    Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07

Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

11. **LC 34 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Identity card
Ex. W 5: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 6: Seniority list
Ex. W 7: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

12. **LC 35 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

13. **LC 36 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

14. **LC 54 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

15. **LC 55 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

16. **LC 56 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

17. **LC 57 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

18. **LC 58 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

19. **LC 59 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

20. **LC 60 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

21. **LC 61 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

22. **LC 62 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

23. **LC 63 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 6: Seniority list
Ex. W 7: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

24. **LC 64 of 2005**
Ex. W 1: EPF slip
Ex. W 2: Representation
Ex. W 3: ESI card
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.19
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

25. **LC 65 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

26. **LC 80 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Identity card
Ex. W 5: Seniority list of casual workers

27. **LC 81 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: representation
Ex. W 4: Identity card
Ex. W 5: Seniority list of casual workers

28. **LC 82 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

29. **LC 83 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7 : Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

30. **LC 84 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

31. **LC 85 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

32. **LC 86 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

33. **LC 87 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

34. **LC 88 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

35. **LC 89 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

36. **LC 90 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: identity card
Ex. W 5: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 6: Seniority list
Ex. W 7: Common order in WP No. 23866/01 & 5722/02 14.6.07

37. **LC 92 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

39. **LC 94 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

40. **LC 100 of 2005**
Ex. W 1: Representation
Ex. W 2: ESI card
Ex. W 3: EPF slip
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 14.6.07

41. **LC 101 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

42. **LC 111 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 14.6.07

43. **LC 112 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07

Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

44. **LC 113 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

45. **LC 132 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

46. **LC 80 of 2006**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

47. **LC 81 of 2006**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

48. **LC 154 of 2006**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

49. **LC 155 of 2006**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

50. **LC 159 of 2006**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

51. **LC 160 of 2005**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

52. **LC 19 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

53. **LC 39 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

54. **LC 40 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt

Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

55. **LC 41 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

56. **LC 88 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

57. **LC 89 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Postal receipt
Ex. W 5: Acknowledgement card
Ex. W 6: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 7: Seniority list
Ex. W 8: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07

58. **LC 90 of 2007**
Ex. W 1: ESI Card
Ex. W 2: EPF slip
Ex. W 3: Representation
Ex. W 4: Order in WP No. 20241/05 dt. 14.6.07
Ex. W 5: Seniority list
Ex. W 6: Common order in WP No. 23866/01 & 5722/02 dt. 14.6.07.

Documents marked for the Respondent

Ex. M1: Photostat copy of Lr. Dt. 11.3.2002 from D/o Heavy Industry

Ex. M2: Photostat copy of Lr. No. 7(14)/91-PR-IV dt. 11.3.1992 (Neat copy of Ex. M1)

Ex. M3: Photostat copy of proceeding of BIFR dt. 3.5.2007

Ex. M4: Photostat copy of proceeding of BIFR dt. 13.6.2008

Ex. M5: Photostat copy of 2001-02 balance sheet-extract-performance of last 10 years

Ex. M6: Photostat copy of 2006-07 balance sheet-extract-performance of last 7 years

Ex. M7: Photostat copy of 2009-10 balance sheet-extract-Profit and Loss.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 383.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्पलेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 36/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 36/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR (DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 36/2006

Between:

Sri M. Pochaiah,
S/o Butchaiah,
R/o H.No. 5-24/R-49,
Rajiv Gandhi Nagar, Kapra Municipality,
Uppal (M), Ranga Reddy District. .....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad-500 062. .....Respondent

APPEARANCES:

For the Petitioner: M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. **The averments made in the petition in brief are as follows:**

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10(1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government, Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2002. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.*, within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated man and he has been exploited by the Respondent by paying less than minimum wages and terminating his services abruptly without any notice consequent to his filing WP before the Hon'ble High Court of A.P., and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of his family and consequent to illegal termination of her services it has become difficult to eak out livelihood of his family.

3. Respondent filed his counter wilh the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991, Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the Kapra Municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra Municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. His engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of his services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by him was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to him by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (RA) Act, 1970. Petitioner's employer was not having any contractual obligation with him as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and he was never exploited. Petitioner rendered service as a contract labourer with a contractor. He can not claim for regularization of his services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by *res judi cata.* Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WWl was examined and exhibits Wl to W8 are marked. While WWl evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e. LC No.36/2006 along with other L.C. Nos. taking from L.C No. 29 to 40/2006 are clubbed together in LC. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case *i.e.*, LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WWl in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WWl have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these

cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. **The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 2921O of 1998 operate *as res judi cata?*
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. **Point No. 1 :**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this Tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. **Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duly of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation. This point is answered accordingly.

9. **Point No. 3 :**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judi cata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of his services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing file Respondent to reinstate the Petitioner in the service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WPNo.29210/1998 will not act as *res judi cata* for the present proceedings.

This point is answered accordingly.

Point No. 4 :

12. Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that he has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and he was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.*, a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to him by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e.*, the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/Court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If she contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Worker and Others {(200I) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on

every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that he is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

Point No. 5 :

21. As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided white deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organisation which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act. 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the

contentions of the Petitioner that he has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Scc.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2001) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division {(2010) 5 SCC 497} Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act. 1947, Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

Point No. 6 :

29. In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. **Result :**

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of his services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Pochaiah	MWl: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex. W1: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostat copy of representation dt. 11.4.98

Ex. W3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex. W4: Photostat copy of representation dt. 3.5.96

Ex. W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostat copy of representation dt. 9.10.98

Ex. W7: Photostat copy of order in WA No. 1602/1999

Ex. W8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1: Photostat copy of order in WP No. 5592/1991

Ex. M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostat copy of order in contempt case No. 1903/98

Ex. M6: Photostat copy of order in WPNo. 29210/1998 dt. 25.9.2000

Ex. M7: Photostat copy of order in WA No. 1602/1999

Ex. M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 384.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध

में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 37/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 37/2006) of the Cent. Govt. Indus. Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workmen, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR (DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : SMT. M. VIJAYA LAKSHMI,

Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 37/2006

Between:

Smt. G. Lakshmi,
W/o Mohan,
R/o Plot No. 123,
Sai Nagar Colony, Near Kushaiguda,
ECIL Post, Ranga Reddy District, ...Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Departmemt of Atomic Energy,
Hyderabad-500 062. ....Respondet

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Narersh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2A (2) of Industrial Disputes Act. 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit from May, 1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area m which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government.

Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of

the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001 Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.*, within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.*, contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc. which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947, Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar *Vs.* Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others *vide* order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The overall control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularzation of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP. 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrigtnly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not

having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Wl to W8 are marked. While WWl evidence was in progress and by virtue of the orders dated 17.3.2009, this matter *i.e.* LC No. 37/2006 along with other L.C. Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case *i.e.*, LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WWl in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases scparately by examining MWl and Management marked Ex.Ml to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 292l0 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act. 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently *i.e.*, in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any

period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duly of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more. Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No. 4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however. Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is. that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him hut claimed that there is an intermediatory between them *i.e.*, a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e.*, the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various

beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. *Vs.* National Union Waterfront Workers and Others {(2001) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M 4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW l had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can he gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4

Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman cannot be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Furthermore, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory prerequisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh *Vs.* Municipal Council, Sanaur. {(2011) 6 SCC page 584} and in the case of Anup Sharma *Vs.* Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to he set aside and Petitioner is entitled for reinstatement into service.

This point in answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. G. Lakshmi	MW1: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex. W1: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostat copy of representation dt. 11.4.98

Ex. W3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex. W4: Photostat copy of representation dt. 3.5.96

Ex. W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostat copy of representation dt. 9.10.98

Ex. W7: Photostat copy of order in WA No. 1602/1999

Ex. W8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1: Photostat copy of order in WP No. 5592/1991

Ex. M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostat copy of order in contempt case No. 1903/98

Ex. M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M7: Photostat copy of order in WA No. 1602/1999

Ex. M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के (पंचाट संदर्भ संख्या 39/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 39/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present :— SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 39/2006

Between:

Sri B. Mallaiah,
S/o Devija.
R/o H.No. 10-1/92, Nehru Nagar,
Block-III, H.C.L.-X Roads,
ECIL Post, Ranga Reddy District.
Hyderabad-62. .....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad-500 062. .....Respondent

Appearances:

For the Petitioner: M/s. G. Ravi Mohan, G. Narersh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate.

AWARD

This is a petition filed invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit *w.e.f.* 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respectof cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availaility of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of Principal Employer to absorb the contract labourer once the contractlabour is abolished and to treat them as regular employees. It is the statutory obligation under Section 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the codtition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9,2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.,* within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.,* contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated man and he has been exploited by the Respondent by paying less than minimum wages and terminating his services abruptly without any notice consequent to his filing WP before the Hon'ble High Court of A.P., and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of his family and consequent to illegal termination of her services it has become difficult to eak out livelihood of his family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar *Vs.* Union of India and in view of the direction given in WP No. 5592 of 1991 filled by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way hack in 1995 as the contract entered into with Sri P. Narasimha. the contractor. Respondent No.2 in WP No.29210/1998 expired by 30.6.1995, On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded hy Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, waich and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents

of the colony. The over all control including allotment of quarters vests with the Estate Officer. NFC, It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 monilis executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide teller dated 30.9.1997. Similar contract was in existence in DAE housing colony where some control labourers were also engaged. Petitioner is one among the labourers engaged hy the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. His engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner Filed WP No.292I0 of 1998 seeking for regularization of his services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'hle High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 rcgularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this tribunal now. It is a belated claim. Statement of the Petitioner that the work done by him was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to him by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with him as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and he was never exploited. Petitioner rendered service as a contract labourer with a contractor. He can not claim for regularization of his services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits Wl to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter *i.e.* LC No.39/2006 along with other LC. Nos. taking from LC. No. 29 W 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case *i.e.,* L-C 28/2006. Accordingly in respect ol all these cases i.e.. LC 28 to 40 of 2006, Smt. T Saradha. WW1 in L-C 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WWl have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.Ml to MB in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards arc being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so. whether the said order is liable to be set aside?

6. To what relief Petitioner is entitled?

7. Point No.1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are in he dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. **Point No. 2:**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A,P. decided WA No.1602/2000 in WP No.29210/1998 by vice of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedncss or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is not be held that this petition is noi barred by limitation.

This point is answered accordingly.

9. Point No.3:

The writs filed invoking the extraordinary jurisdiction oHhe Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain Industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution ol India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Ciwel) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regulari sation of their services with the Respondent, Whereas, the present industrial dispute is raised by the Petitioner, consequent io termination of his services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are cotally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210.1998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No.4:

Admittedly, Petitioner has worked with Ihe Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that he has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however. Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them,

14. Whereas. Respondent is contending that house keeping works in DAF. housing colony, in which the staff of the Respondent unit are housed, is being taken care of

by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of hclpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAT Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and he was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.,* a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to him by the Respondent. Furthermore, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e*. the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will havet o consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any give for result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. *Vs*. National Union Waterfront Workers and Others[(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4. the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross-examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18 Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-Charge within 2 (two) weeks from the date of issue of this order. If the work was done in furtherance of E. M4 order, in every likelihood the daily, report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that he is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody. If actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has

been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains thai Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to he decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:-

"25-F: Condition precedent to retrenchment of workmen:— No employed in any industry who has been in continuous service for not less than one year under an employer should be retrenched by that employer untit^

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent the fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record. Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that he has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F hy working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Horfble the Apex Court. In the case of Devinder Singh *Vs.* Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division 1(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying

with the mandatory provisions contained under Sec.25 F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable lo be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner tor the period from 23.10.1998 of the date of termination of his services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit

Typed to my dictation by Smt. P. Phani Gowri. Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WWI: Sri B. Mallaiah	MW/Smt. A. Rama Devi

Documents marked for the Petitioner

Ex.W1: Photostat copy of order in WPNo. 292lO/1998 dt. 25.9.2000

Ex.W2: Photostat copy of representation dt. 11.4.98

Ex.W3: Photostat copy of order in SLA (Civil) No. 13451/ 2001

Ex.W4: Photostat copy of representation dt. 3.5.96

Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex.W6: Photostat copy of representation dt.9.10.98

Ex.W7: Photostat copy of order in WA No.l602/1999

Ex.W8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex.M I: Photostat copy of order in WP No. 5592/I99l

Ex.M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner Kapra Municipality

Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Fx.M5: Photostat copy of order in contempt case No. 1903/98

Ex.M6: Photostat copy of order in WP No.29210/I998 dt. 25.9.2000

Ex.M7: Photostat copy of order in WA No. l 602/1999

Ex.M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 386.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 40/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 40/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C No. 40/2006

Between:

Smt. B. Lakshmi,
W/o B. Shankar,
R/o H. No. 1-226,
Nehru Nagar Colony, Block-III, H.C.L, X Roads,
ECIL Post, Ranga Keddy District,
Hyderabad -62.

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad-500062. .....Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit *w.e,f.* 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.3'0 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefit on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No, 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.,* within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.,* contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works *etc.,* which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent

used to lake the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member other family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar *Vs.* Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others *vide* order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA Municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAH housing colony is being taken care of by Kapra Municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads *vide* letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall he maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim, Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Pelitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judicata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.03.2009, this matter *i.e.* LC No. 40/2006 along with other L.C. Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case *i.e.,* L.C. 28/2006. Accordingly in respect of all these cases *i.e.,* L.C. 28 to 40 of 2006, Smt. T. Saradhar WW1 in L.C. 28/2006 alone has been cross-examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence have been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 2921/0 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P decided WA No.1602/2000 in WP No. 29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently *i.e.,* in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No 3 :

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases tiled before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extraordinary jurisdiction provided under Article 226 of Constitution of India. Furthermore, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated

22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Furthermore, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/l998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA Municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.,* a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Furthermore, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e.,* the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether, the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that the Industrial Tribunal/Court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. *Vs.* National Union Waterfront Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as

contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall he submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex, M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged tor the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no 'such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee,

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this cast. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularizatton of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to lake services of the Petitioner since 23.10.1998 . In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely he inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Scc. 25 F reads as follows:-

"25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has

been in continuous service for not less than one year under an employer shall be retrenched by that employer ***until:—***

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six. months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall he compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh *Vs.* Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma *Vs.* Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Count of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled to reinstatement into service.

This point is answered accordingly.

29. Point No. 6 :

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it an safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result: :-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Lakshmi	MW1: Smt. A. Rama Devi

Document marked for the Petitioner

Ex.Wl: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostat copy of representation dt. 11.4.98

Ex. W3: Photostat copy of order in SLA (Civil) Np. 13451/2001

Ex. W4: Photostat copy of representation dt. 3.5.96

Ex. W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostat copy of representation dt. 9.10.98

Ex. W7: Photostat copy of order in WA No. 1602/1999

Ex. W8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1: Photostat copy of order in WP No. 5592/1991

Ex. M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostat copy of order in contempt case No. 1903/98

Ex. M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M7: Photostat copy of order in WA No. 1602/1999

Ex. M8: Phtostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुयूक्लियर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 2/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR (DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HYDERABAD

PRESENT:— Smt. M. VIJAYALAKSHMI,

Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTEL L.C. NO. 2/2006

Between:

Smt. B. Lakshmi,
W/o Heerala,
R/o H. No. 6-24/1, Subhash Nagar,
Mallapur, Railway Bridge,
N.F.C. Post, Nacharam, Uppal (M),
Ranga Reddy District,
Hyderabad-62. .....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad - 500 062. ....Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kuniar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit from 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers

for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 292l0 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition. Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A,P. The said appeal was allowed on 23.2.2001 Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with 3 liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P., and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA Municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE. colony. The house keeping works of DAE housing colony is being taken care of by Kapra Municipality. The requirement is being met through helpers deployed by sucli persons. Making such arrangement on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time.

It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976, As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She cannot claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judicata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, i.e., L.C. 3/2006 to 8/2006 including this case are clubbed with LC No. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases i.e., LC. 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. Ml to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23,10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No.1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Knmar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government Organisations, Central Government Undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers

and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extraordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No.4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such

a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the coditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "*the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract or for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer."* This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others{(2001) 7 SCC page I}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex, Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regulamation of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised .seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they arc all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or otherwise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the

Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediator between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

"**25-F: Conditions precedent to retrenchment of workmen:-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent. leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Honble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impunged termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No.6:

In view of the findings given in Point No. 5 above, the impugned oral termination order daled 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside-Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 21.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Office.

Appendix of evidence

Witnesscs examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Lakshmi	MWl: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex.Wl: Photostat copy of order in WPNo 29210/1998 dt.25.9.2000

Ex.W2: Photostat copy of representation dt. 11.4.98

Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/ 2001

Ex.W4: Photostat copy of representation dt.3.5.96

Ex.W5: Photostat copy of provisional receipt from Kapra Municipality 13.11.98

Ex.W6: Photostat copy of representation dt 9.10.98

Ex.W7: Photostat copy of order in WA No.1602/1999

Ex.W8; Photostat copy of representation dt.24.10.2005

Documents marked for the Respondent

Ex.M1: Photostat copy of order in WP No. 5592/1991

Ex.M2: Photostat copy of receipt from Kapra Municipality dt.l3.11.98

Ex.M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex.M5: Photostat copy of order in contempt case No. 1903/98

Ex.M6: Photostat copy of order in WPNo.292l 0/1998 dt.25.9,2000

Ex.M7: Photostat copy of order in WA No. 1602/1999

Ex.M8: Photostat eopy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल कॉम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 1/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No 1/2006) of the Central Government Industrial Tribunal/Labour Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of August 2013

INDUSTRIAL DISPUTE L.C. No. 1/2006

Between:

Smt. G, Suguna,
W/o Yadagiri,
R.'o H.No.5-2/1. Boduppal Colony,
Mallikarjuna Temple, Ghatkeshar(M),
Ranga Reddy District,
Hyderabad-62. ...Petitioner

AND

Chief Executive,
Nuclear Fuel
Department of Atomic Energy,
Hyderabad -500 062. ....Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan. G. Narersh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For ihe Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The ayerments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit from 1.5.1992 along with other similarly situated persons.

Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them.The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees- It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area rn which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said writ petition. Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000, Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of theHon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i,e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A,P.. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha. the contractor, Respondent No.2 in WP No,29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of

the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jangle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 292l0 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now, It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970, Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9-12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis gf completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WWI was examined and Exhibits Wl to W8 are marked-While WWl evidence was in progress and by virtue of the orders dated 17.3,2009, this matter ie L.C 1/2006 and LC Nos. 2 to 8/2006 are clubbed together in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006- Accordingly in respect of all these cases i.e., LC 1 to 8 of 2006, Suit, B. Lakshmi. Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more. Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.Ml to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. **The points that arise for determination are:**

1. Whemer this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No.1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent

is contending that this Tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union Of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec,2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute. This point is answered accordingly.

8. Point No.2:

It is the contention of the Respondent that present dispute is barred hy limitation for the reason That Petitioner filed this petition five years after the Hon'ble High Court of A.P, decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are hound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which arc clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P, the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal(Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending; seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WPNo.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

12. Point No.4:

Admittedly. Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period

of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and slorm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitionerhas been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal *principle that the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others{(2001) 7 SCC page 1}. which is relied upon by Learned Counsel for the Respondent himself.*

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages fo contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order'". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-chargc on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon,

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Rcspondenl failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and

Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularizalion of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were temiinated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regulari zation of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regulari-nation of services. The said arguments are to he taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to he decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998, In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

"25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall he retrenched by that employer until:—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice,

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record. Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been m continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec,25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such nolice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. *In the Case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010, 5 SCC 497]Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under $ec.25F (A) and (B) should ordinarily result in his reinstatement.*

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Scc,25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No.6:

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. G. Suguna	MWl: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex.Wl: Photostat copy of order in WPNo.29210/1998 dt. 25.9.2000

Ex.W2: Photostat copy of representation dt. 11.4.98

Ex.W3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex.W4: Photostat copy of representation dt.3.5.96

Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98

Ex. W6: Photostat copy of representation dt.9.10.98

Ex.W7: Photostat copy of order in W A No. 1602/1999

Ex.W8: Photostat copy of representation dt.28.9.2005

Documents marked for the Respondent

Ex,Ml: Photostat copy of order in WP No. 5592/199l

Hx.M2: Photostat copy of receipt from Kapra Municipality dt l3.11.98

Ex.M3: Photostat copy of letter dt,9,1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex.M5: Photostat copy of order in contempt case No. 1903/98

Ex.M6: Photostat copy of order in WPNo.29210/1998 dt.25.9.2000

Ex.M7: Photostat copy of order in WA No.1602/1999

Ex.M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 कार 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डी एफ एस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, मुंबई के पंचाट (संदर्भ संख्या 2/22 का 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/01/2014 को प्राप्त हुआ था।

[सं॰ एल-11012/1/2010-आई आर (सीएम-I)]

एम॰ के॰ सिंह, अनुभाग अधिकारी

New Delhi the 17th January, 2014

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 2/22 of 2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of DFS (India) Private Limited, Duty Free Shop, and their workmen, received by the Central Government on 17/01/2014.

[No. L-11012/1/2010-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, B.A. LL.M., Presiding Officer

REFERENCE NO CGIT-2/22 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DFS (INDIA) PVT. LTD. DUTY FREE SHOP

The General Manager
DFS (India) Private Ltd., Duty Free Shop
2C Air India Arrival Lounge
Chhatrapati Shivaji International Airport
Sahar, Andheri
Mumbai—400 066.

AND

THEIR WORKMEN

Shri Nandakumar G. Chavan
M-906, Bhoomi Breeze
Raheja Estate
Kulupwadi
Borivali (E)
Mumbai 400 066.

Appearances:

FOR THE EMPLOYER : Mr. Sundeep Puri, Advocate.
FOR THE WORKMAN : Mr. N.G. Kankonkar, Advocate.

Mumbai, dated the 12th November, 2013

AWARD

The Government of India, Ministry of Labour & employment by its Order No. L-11012/1/2010-IR(CM-I), dated 17.02.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Duty Free Shop (India) Pvt. Ltd., Mumbai in terminating Shri Nandakumar G. Chavan. Warehouse Assistant from the services w.e.f. 15.05.2009 as contended by the workman concerned is justified and legal?
>
> (ii) To what relief is the workmen concerned entitled?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-4. According to him, he was employee of the first party company since 28/03/2008. He was confirmed in the service from May 2008. His duties were to arrange for the airport entry pass for DFS employees, visitors to the duty free shop like supplies, depositing telephone bills etc. He was performing his duties manually and of clerical nature. He was not doing any supervisory or administrative work. According to the second party workman he was working with the first party and his service was clean, spotless, unblemished and to the entire satisfaction of his superiors According to him on 14/10/2008 Mr. Vijay Patel, Country Head Manager of the first party and Mr. Raja, Manager of loss and prevention department asked the workman and his colleague Sameer Sawant not to attend their duties with immediate effect and compelled to surrender their airport entry passes so as to restrain them from doing their regular work. No reason was given to the second party as to why he was suspended till further orders. They paid him salary of October 2008. From the month of November and December the first party paid some amount to the second party as subsistence amount Neither show cause notice was issued, nor any charge sheet was served on the second party. He was not given an opportunity to give any explanation. The first party all of a sudden terminated the services of the second party by their letter dt. 15/05/2009. The second party approached to their union. The union wrote letters to the first party. As they did not give any response, the union made a complaint to the Labour Commissioner (C). As conciliation failed, as per the report of ALC (C), the Labour Ministry sent the reference to this Tribunal. According to the workman the first party dismissed him from services illegally. Therefore he prays that the order of dismissal be quashed and set aside. He also prays that he be reinstated in the service of the first party with full back wages from 15/05/2009. He also prays that pending hearing, the first party be directed to take second party in the employment and allow him to do his regular work.

3. The first party resisted the statement of claim *vide* their written statement at Ex-7. According to them, the second party is not 'workman' as defined under Sec 2 (s) of the Industrial Disputes Act. He was doing the job of supervisory and administrative nature. Therefore the reference is not maintainable. The second party is guilty of supressing the true facts hence he is not entitled to any relief. His services were terminated simplicitor *vide* letter dt. 15/5/2009. The action of the management is legal, proper and justified. The second party was appointed as Ware-house Assistant and was pre dominantly performing duties of administrative nature. On 16/09/2008 workman and Mr. Sameer Sawant made an attempt to commit theft/ transfer 12 bottles of Johny Walker Black Label from 2C Departure to 2C arrival ware house without any record. While removing the bottles Ms. Neha Patil, Sales Associate asked them where they were taking the stock and also told them that without proper billing they cannot remove the stock. The workman told her that there was some stock taking activity at arrival section and therefore they were transferring the stock and have removed 12 bottles of JW

Black Label. Ms. Neha Patil reported it to Duty Security Guard, Mrs. Jayashree Save. She enquired with workman and Mr. Sameer Sawant. They told her that they were taking out the bottles as per the instructions of Mr. Pai. Ms. Jayashree Save informed the incident to another security superiors Mr. Dinesh Karakesia When he enquired with Ms. Jayshree Save she told that the workman and Mr. Sameer Sawant told her that money has been handed over to Mr. Pai. Security Supervisor informed the incident to Mr. Pai and then to L.P. & Custom Manager. On the same day at about 8.00 p.m. the workman was spotted by one Sales Assistant, Mr J. Dewalekar exiting the 2 B arrival gate. The workman was carrying one carry bag in his left hand, his usual office bag in his right hand and a Johny Walker backpack bag on his back. He was unable to walk properly due to the weight of the bags he was carrying. The backpack of Johny Walker was the same being given as GWP with JW bottles purchased by customers at DFS.

4. From 7/10/2008 to 14/10/2008 there was a full-fledged inquiry conducted by Director, Talent Management, Singapore Raja, Shri Khan- Loss Prevention Manager Singapore Vispi Patel- CEO India Viren Ahuja — Joint venture Partner — Flamingo. During the inquiry number of people were interviewed by the committee and it was concluded that Mr. Sunil Raisinghani the then Product Sales Manager, Mr. Prasanna Pai, Loss Prevention Customs Manager, Sameer Sawant and the workman were involved in the misappropriation of liquor and fully involved in the irregularities of custom compliances as well as theft of liquor from various locations. Mr. Raisinghani and Pai tendered their resignations. Mr. Sameer Sawant was also terminated. He had approached Labour Commissioner for conciliation. However later on he also resigned at his own. The workman also approached Assistant Labour Commissioner. The workman was found guilty of mischief of theft and misappropriation therefore his services were terminated. After termination of the services the second party is gainfully employed and earning. Hence he is not entitled to any relief. Therefore the first party prays that the reference be rejected with cost

5. Following are the issues for my determination. I record rny findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether second party is 'workman' as contemplated under Section 2(s) of the .I.D. Act?	Yes
2.	If yes, whether his termination is legal and valid?	No
3.	Whether the workman is entitled to any relief sought for?	As per the final order.
4.	What order?	As per the final order.

REASONS

Issue no.1:-

6. Herein the fact is not disputed that the second party was the employee of the first party. He was appointed as Ware-house Assistant and was confirmed in the service. According to the second party he was doing the work manually as well as clerical in nature. Therefore according to him he was a workman as defined under Sec. 2(s) of the I.D. Act. As against this according to the first party, the second party was predominantly performing the duties of administrative in nature. Therefore he does not come within the definition of 'workman'. The duties of Ware-house Assistant are given by the first party in their written statement at Ex-7. However no duty given therein is of supervisory or administrative in nature. His few duties given in the duty list are as follows:

* Ensure merchandise is accurately checked, skued and labelled correctly against appropriate work.
* Ensure orders are checked and packed against the correct paper work.
* Identify and rotate old stock.
* Assist in all departments within the DC when requested by management in unloading and loading of containers, picking and packing orders, receiving, booking and checking of inwards stocktaking.
* Be responsible for housekeeping of the entire bond stock areas (including surrounding grounds).
* Assist stock inventory controller with aged stock, discrepancies stock takes etc.
* Treat all management and fellow team members with respect to support a team environment.
* Perform any other duties as requested in a diligent and consequence manner.
* Health and safety
* Take all practical measures to minimise, isolate or eliminate hazards in the work place. Ensure that work place is safe and behave in a manner that does not impose any risk to health and safety.
* Comply with reasonable instructions from any supervisor or authorised representative of the company regarding health and safety matters.
* Actively participate in the Emergency Response procedures.
* Report any accidents, injuries of hazards in the workplace to management.
* Actively support and comply with DFS CHS policies and procedures.

* Systems and procedures.
* Comply with company policy and procedures relating to security and stock control.
* Comply with all security audit requirements,
* Actively support and comply with all health and safety policy procedures and regulations.
* Adhere to company dress standards and punctuality.
* Uphold the highest standard of professional grooming and presentation at all times etc.

7. According to the workman he use to prepare pass and to assist Mr. Sunil Raisihani. None of these duties are either seen of administrative or supervisory in nature. In this respect the Ld. advocate for the first party submitted that from their letter of suspension and dismissal it is revealed that the workman was doing administrative work. It is mentioned in these letters that he was doing administrative work. In this respect it is pertinent to note that these letters were issued afterwards. However in the appointment letter/offer of employment letter dt. 28/3/2008 at Ex-24 nowhere it is mentioned that the second party was appointed to perform work in the nature of supervisory or of administrative in nature. Therefore letter of suspension or termination need not be taken into account to ascertain the nature of work done by the workman. The Ld. adv. for the first party on the point resorted to Supreme Court ruling in H.R. Adyanhayay Etc V/s. Sandoz (I) Ltd. Etc. AIR 1994 SC 2608 wherein the Hon'ble Court while defining workman observed that;

"Workman means any person (including an Apprentice) employed in any industry to do any manual, unskilled, skilled technical operational, clerical or supervisory work for hirer or reward. Whether the terms of employment be expressed or implied"

The Hon'ble Court further observed that;

"It does not include any person (i) Who is subject of airforce or army or navy Act. (ii) Who is employed in the police service or as an officer or other employee of a prison or (iii) who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding Rs. 1,600/- per month or exercises either by nature or the duties attached to the office or by reason of power vested in him functions mainly of a managerial nature."

8. In the case at hand the duties shown in the duty list of the workman as Ware-House Assistant cannot be said of administrative or managerial work. He was required to ensure orders are checked packed against correct paper work. He was supposed to identify and rotate old stock. He was supposed to assist in all departments with the DC as per the direction of management in unloading and loading of containers, picking and packing order, receiving checking booking of inward stock, stock taking. He was supposed to assist stock inventory controller. He was also supposed to perform any other duty as requested/directed in a diligent and contentious manner. He was supposed to comply with company policy and relating to security. He was supposed to comply with all security audit requirement. He was also required to adhere company dress standard and punctuality. He was neither supervising work of any employee nor taking any independent decisions. It shows that he was not performing any managerial or administrative duties.

9. In this respect the Ld. adv. for the first party submitted that his designation is accepted by the workman as Warehouse Assistant and his pay was above Rs.1,600/- p.m. Therefore he is not a 'workman'. In support of his argument Ld. adv. resorted to Apex Court rulrng in Mukesh K. Tripathi V/s. Sr. Divisional Manager, LIC &Qrs. AIR 2004 SC 1479 wherein the Hon'ble Court in respect of Apprentice Development Officer observed that;

"The duties and/obligation of Development officer of the Corporation by no stretch of Imagination, can be held to be performed by an apprentice."

The Hon'ble Court in this case held that;

"The Development Officer of LIC was rightly held not to be a workman."

However the duties of Warehouse assistant cannot be compared with the Development Officer of LIC. Thus I hold that this ruling does not extend any help to the first party.

10. In this respect the Ld. Adv. for the first party submitted that burden is on the workman to prove the existing relationship of employer-employee between them to which workman failed, In support of his argument the Ld. adv, resorted to the Apex Court ruling in Workmen of Nilgiri Co-op. Mkt. Society Ltd, V/s. State of Tamil Nadu & Ors. AIR 2004 SC 1639 wherein the Hon'ble Court in para 47 of the judgement observed that;

"It is well settled principle of law that the person who sets up a plea of existence of a relationship of employer and employee, the burden would be upon him."

The Hon'ble Court further observed that;

"When a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person."

11. In this respect I would like to point out that in the case at hand the relationship between the parties is not in dispute. On the other hand the fact is admitted that there

exists employer-employee relationship between first party and the second party. The issue herein for determination is whether the second party is a workman as defined under Section 2 (s) of the I.D. Act. Therefore this ruling in respect of relationship between the parties is not relevant to the facts of the present case.

12. On the point Ld. adv for the first party further submitted that, the burden is on the second party to prove that he is workman. It is not on the first party to prove that he is not a workman as defined under Sec 2 (s) of the I.D. Act. In support of his argument Ld. Adv. cited Bombay High Court ruling in Maharashtra Industrial Development Corporation & Ors. Vs. Baban Nathaji Sarode & Anr. 2003 (i) Bom. CR 680, wherein the Honble Court on the point observed that;

> *"It was for the respondent to have positively pleaded and proved that he was squarely covered in the main part of definition of "Workman" even from the duty list which is considered by the industrial Court."*

13. In this respect the Ld. adv. for the second party pointed out that the second party has pleaded in his statement of claim as well as contended in his affidavit and has also given his duty list. Neither he was performing any managerial or administrative duties nor was recruited as an officer to perform managerial or administrative duties. MW-1 has also admitted in his cross that the workman used to assist the Ware-house in-charge. It is contended by the workman that, he was doing his work manually and of clerical nature. The duty list also reflects the same fact. In the circumstances I hold that the second party has discharged the initial burden as cited in the above ruling.

14. The Ld. adv. for the first party further submitted that while performing administrative or managerial duty some duties undertaken by him like maintaining accounts, filling certain proformae are clerical in nature, but his major job was of managerial in nature and such employee cannot be termed as workman. In support of his argument the Ld. adv. relied upon Apex Court ruling in S.K. Maini V/s. M/s. Carona Sahu Company Ltd- & Ors. AIR 1994 SC 1824. In this respect from the duties of the workman as Ware house Assistant, it cannot be said that his work was mainly of administrative or managerial nature. Therefore this ruling also does not extend any help to the first party.

15. On the point the Apex Court ruling is helpful in National Engineering Industries Ltd. V/s. Shri Kishan Bhagaria and Ors. AIR 1998 SC 329. In this case the Hon'ble Court has examined the nature of supervisory work the employee was doing. In that case in respect of internal Auditor of the Company, the Hon'ble Court observed in para 9 of the judgment that;

> *"His duties were mainly reporting and checking on behalf of the management. A reporter or a checking clerk is not a supervisor. The respondent herein does not appear to us doing any kind of supervisory work. He was undoubtedly checking up on behalf of the employer but he had no independent right or authority to take decision and his decision did not bind the company."*

In this matter, the Hon'ble Court upheld the decision of Division Bench of the High Court who had decided that the internal auditor i.e. respondent no.1 therein was a workman.

16. In the case at hand, though the workman herein was designated as Warehouse Assistant and his pay scale is higher he has no independent power to take decision. His duties were to check the stock, scull, label correctly, ensure the orders are checked and packed against the correct paper work, identify and rotate old stock, assist in all departments. He was also supposed to assist stock inventory controller with aged stock. He was also supposed to perform any other work in a diligent and contentious manner. Neither he was empowered to take independent decisions nor authorized to bind the company by his decision. It shows that he was not performing any administrative or managerial duties, his duties were of manual and of clerical nature. In the circumstances I hold that the second party is 'Workman' within the meaning of Section 2 (s) of the I.D. Act. Accordingly, I decide this issue no.1 in the affirmative.

Issue no. 2:-

17. In respect of termination of the services, it is contended on behalf of the first party that, the workman was involved in misappropriation of stock of liquor and in irregularities of Customs compliances, as well as theft of liquor from various locations. In the written statement it is contended that on 7/10/2008 to 14/10/2008 there was a full fledge inquiry conducted by the Director, Talent Management-Singapore, Raja, Shri Khan-Loss Prevention Manager, Singapore, Vispi Patel-CEO India, Viren Ahuja-Joint Venture Partner - Flamingo. It is further contended that during the inquiry number of people were interviewed by the committee and it was concluded that, Mr. Sunil Raisinghani the then Sr. Product Sales Manager, Mr Prasanna Pai Loss Prevention and Customs Manager, the workman and Mr. Samir Sawant were involved in misappropriation of stock of liquor and fully involved in irregularities in customs compliances, as well as theft of liquor from various locations.

18. Though it is contended in the written statement that there was full-fledged Inquiry by the high officials of the company, however from the record it is revealed that, neither any show cause notice was issued to the workman, nor he was served with any charge sheet. Furthermore the workman was not present on all the dates when the alleged inquiry was conducted. The workman was not even asked

to remain present on all the dates of alleged inquiry. These facts are admitted in the cross examination by the Management witness no.1, Mr. Kailash Bushan who has deposed at Ex-42. In para 13 of his cross examination he has stated that, *"no show cause notice or charge sheet was given to the second party. The second party was not present on all the dates as he was not asked to remain present on all the dates of the alleged inquiry."* The first party has also produced the inquiry papers/the documents in respect of the minutes of the alleged inquiry. Ex-48 is the copy of minutes of the meeting held on 7/10/2008 to 14/10/2008 in respect of the workman. From these minutes Ex-48 it is revealed that the Committee Members interviewed some employees (witnesses) and found that four people were involved in misappropriation of stock of liquor and irregularities of customs compliances as well as theft of liquor from various locations and they recommended the termination of services of the workman. Ex-49 is the report of Neha Patil to H.R Manager Ex-50 is the statement of witness Jayashree Save. Ex-51 is the statement of Dinesh H. Karakesia working as Supervisor. Ex-52 is the statement of witness of Jagannath Deolekar However it is revealed that neither the statements of these witnesses were recorded in presence of the workman, nor they were offered for cross examination.

19. From the evidence on record it is revealed that, there was only preliminary inquiry. On the basis of the said inquiry neither show cause notice was issued to the workman, nor his explanation was called for. No charge sheet was served on the workman and there was no inquiry held as contemplated under law. In this respect the Ld. adv. for the first party submitted. That in cases of theft, forgery the services of employee can be terminated even without domestic inquiry. In support of his argument the Ld. adv. resorted to Delhi High Court ruling in All India Institute of Medical Sciences V/s O.P. Chavan & Ors 2007 (113) FLR 161 wherein the Hon'ble Court in para 14 of the judgement observed that;

> *"It is not necessary that, in every case where a person is involved in theft, forgery and where a criminal case is registered, the management has to hold an inquiry and then only terminate the services The management can always terminate the services in terms of service conditions of an employee, for loss of faith and confidence, where the employee involved is handling sensitive post or high degree of integrity and honesty is expected from him because of responsibility."*

20. In the case at hand it is alleged that the workman was involved in misappropriation and theft case. However neither any criminal case was registered against him nor he was recruited in managerial cadre. Therefore the ratio laid down in this ruling is not attracted to the set of facts of the present case.

21. The Ld. adv. for the first party further submitted that as the workman was caught removing store items, he was rightly dismissed by the management. On the point the Ld. adv. cited following rulings:

(I) Escort Ltd. (Tractor Div) V/s. Labour Court (P&H) 1986 FLR 273. In that case the Labour Court had given finding of guilty of theft. In the circumstances Hon'ble High Court held that Labour Court cannot proceed to exercise jurisdiction under Section 11 A to water down quantum of punishment.

(II) Pfizer Ltd. V/s. Mazdoor Congress & Ors. AIR 1996 SC 2618 wherein temporary workman was found committing theft. His services were terminated and the Labour held that the management was not indulging in unfair labour practice.

However ratios laid down in both the cases are not attracted to the set of facts of the present case as facts therein are totally different than the facts in the case at hand.

22. In respect of legal and proper inquiry the guideline is given by the Hon'ble Apex Court in Sur Enamel and Stamping Works Ltd. V/s. Their Workmen 1963 II LLJ 367 wherein the Hon'ble Apex Court laid down the following conditions for fair and proper domestic inquiry. They are:

"(1) The employee proceeded against has been informed dearly of the charges leveled against him.

(2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges

(3) The employee is given a fair opportunity to cross examine witnesses.

(4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and

(5) The inquiry officer records his findings with reasons for the same in his report. "

23. In the case at hand neither workman was served with show cause notice nor any charge-sheet was served on him. Neither witnesses were examined in his presence nor they were offered for cross examination. In short there was no inquiry as such initiated against the workman. On the other hand the workman was dismissed merely on the basis of reports and interrogation of some witnesses by the officials of the company, in the circumstances I hold that in fact there was no inquiry at all.

24. The Ld adv. for the first party cited few rulings in respect of the contents of victimization, in respect of dealing with the question of bonafide etc. However as there was no inquiry and no Inquiry Officer was appointed, all the rulings referred on behalf of the first party do not extend

any help to it. The Ld. Adv. also referred some rulings where in, the respective courts held that for misconduct of theft, termination or dismissal from service is the adequate and proper punishment. However the rulings are in respect of cases where the workmen were found guilty after domestic enquiry, in the case at hand there was no enquiry as such. Thus question of adequate or proper punishment does not arise. Those rulings thus are totally irrelevant. Therefore it is unnecessary to discuss these judgments cited on the point of punishment.

25. In the light of above discussions it is clear that no charge sheet was served on the workman. No inquiry Officer was appointed and there was no inquiry at all. The workman was removed merely on the basis of some report and on the basis of interrogation of some employees by the officials of the company. In this back drop it needs no further discussion to arrive me at the conclusion that the services of the workman were terminated illegally. Accordingly I decide this issue no. 2 in the negative.

Issue no. 3:-

26. As the services of workman were terminated illegally, without any inquiry the Ld. adv. for the second party submitted that workman should be reinstated with full back wages. In support of his argument the Ld. adv. for the second party resorted to Apex Court ruling in UPSRTC through its MD V/s. J.P, Mishra 2003 I LLJ 224. In that case the order of termination was held rightly set aside by High Court as the rule of natural justice requiring issue of notice to the respondent to show cause against the proposed action was not observed by the management. Therefore the workman therein was reinstated by the High Court with full back wages. The Hon'ble Supreme Court confirmed the order of reinstatement with modification in the order of back wages. In that case, full-fledged inquiry was held. After receipt of the report of the Inquiry Officer, show cause notice was not issued to the workman calling upon him to show cause as to why action should not be taken against him. In the circumstances the Hon'ble Court upheld the order of reinstatement of the workman with partial back wages. In the light of this ruling Ld. adv. for the second party submitted that in the case at hand the services of workman was terminated without any charge sheet or inquiry. Therefore he should be reinstated with full back wages. The Id. adv. also resorted to the Division Bench ruling of Bombay High Court in Taranjitsingh I, Bagga V/s. M.S.R.T.C. 2008 (4) Bom C.R. 330. In that case the Labour Court and Industrial Tribunal had given findings in respect of the inquiry that it was not fair and proper as there was violation of principles of natural justice, as no opportunity was given to the workman to cross examine the two management witnesses. Therefore the workman therein was reinstated with full back wages. In writ before single judge the order of directing payment of back wages was set aside. In writ appeal the Hon'ble Division Bench of Bombay High Court examined the facts and circumstances and in the light of various decisions of Apex Court, the Hon'ble Court para 7 of the judgment observed that;

> *"In view of this, in our view, it was not necessary for the Ld. judge to interfere with the findings of both the Courts below that the appellant was entitled to full back wages upon his reinstatement"*

27. On the point of back wages the Ld adv. for the first party submitted that the burden was on the workman to prove that he was unemployed and back wages should not be awarded unless employee shows that he was not gainfully employed, in support of his argument, Ld. adv. resorted to Himachal Pradesh High Court ruling in Pawan Kumar V/s. H.P. State Industrial Corporation & Anr. 2007 III LLJ 281 HP wherein the Hon'ble Court in para 2 of the judgment observed that;

> *"When the question of determining the entitlement of as person to back wages is concerned, the employee has to show that he was not gainfully employed. The Initial burden is on him. After and if, he places materials in that regard, the employer can bring on record materials to rebut the claim."*

28. The Ld. adv for the first party also resorted to Apex Court ruling in Kendriya Vidyalaya Sanghatan & ANR V/s. S.C, Sharma AIR 2005 SC 768 wherein the Hon'ble Court has laid down the same principle as law of the land.

29. In this respect the Ld. adv. for the second party submitted that it is mentioned in the statement of claim that the workman tried to get some other job. However he could not get any job and he is not gainfully employed. In this respect the Id. adv. for the first party submitted that the workman is working as RTO Agent. Suggestion to that effect was put to the workman in his cross examination The workman has denied the suggestion that he is working as RTO agent. Neither workman has placed on record any material nor the management has led any evidence to show that the workman is working as RTO Agent and he is gainfully employed. In this respect I would like to point out that after termination of his services the workman must be earning something, it may not be sufficient or equal to his pay. However he may be earning at least to meet the two ends. He may have suffered a lot as he lost his job and was required to fight the legal battle. In this back drop to meet the end of justice instead of awarding full back wages, I think it proper to award 60% of the total emoluments from the date of termination of his services till the date of his reinstatement.

30. In short, as services of the workman were terminated illegally and without any charge sheet or inquiry, he is entitled to be reinstated. In this back drop, I think it

proper to reinstate him with 60% back wages, continuity of service and all other consequential benefits. Accordingly I partly allow the reference and proceed to pass the following order:

ORDER

The reference is partly allowed with no order as to cost.

1. The order of dismissal of second party from services is hereby declared illegal and the same is set aside.
2. The first party is directed to reinstate second party workman in service with 60% back wages, continuity in service with all other consequential benefits.

Date: 12.11.2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 390.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 01/2007 को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 01/2007) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Managing Director, Indian Immunologicals Limited, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 11th day of June, 2013

M.P. No. 1/2007

Between:

Sri Shaik Umar Farook,
S/o Shaik Hussain Peer,

R/o F.No. 56, Mamatha Nagar,
Nagole, Hyderabad-68. .....Petitioner

AND

The Managing Director,
Indian Immunologicals Ltd.,
Rakshappuram, Gachibowli,
Hyderabad-19. .....Respondent

Appearances:

For the Petitioner. M/s. s. Prasada Rao, C. Bala Subrahmanyam & K. Bharathi, Advocates

For the Respondent: M/s. P. Nageswar Sree, K. Raghuram Reddy & Ch. Venkata Raju, Advocates

ORDER

This petition under Sec. 33 C(2) of the Industrial Disputes Act, 1947 has been filed by peititioner Sri Shaik Umar Farook, against the respondent Indian Immunologicals Ltd., seeking for payment of certain amounts after his resignation to a tune of Rs. 2,45,457/-.

2. The contentions of the Petitioner in brief are as follows:-

Petitioner was offered appointment *vide* letter dated 14.8.2000 as Marketing Supervisor and appointed from 11.9.2000 in the scale of 4700-110-5800-EB-110-7230 with all other allowances applicable from time to time. He was also issued with certificate of achieving annual scale target 2000-2001 duly signed by the Managing Director and was issued with a merit certificate for his achievement of 137% as sales target for 2002-2003. While so, he was compelled to resign the post because of his immediate superior one Mr. Sastry who had created havoc and he forced the Petitioner to resign. Further, Petitioner was not paid his entitled benefits which are: Salary form 1.6.2004 to December, 2004 @ his last salary drawn Rs. 8220/-, LTC of Rs. 6863/- and Medical reimbursement of one month basic salary of Rs. 6160/- bonus for the year 2003-2004 and 2004-December 2004 part payment *i.e.,* 1 and half month salary, the production incentive which is determined amount since he got merit certificate of given production for the year 2003-2004 of one month basic pay, incremental arrears from April, 2004 to September, 2004 Rs. 6,000/-. Also entitled for gratuity/service compensation for 4 years, @ 15 days *i.e.* 2 months salary comes to Rs. 16,440/-, in total the Petitioner is entitled for Rs. 2,45,457/-. Hence, this petition to direct the Respondent to pay all the benefits due to him.

3. Having received the notice of this petiton Respondent filed counter statement stating that Patitioner joined as Marketing supervisor and has exercised supervisory, administrative and managerial powers and drew salary exceeding Rs. 1600, hence, he is not a 'workman' as contemplated U/Sec.2 (s) of Industrial Disputes Act, 1947. Therefore, he is not entitled to invoke jurisdiction of this Hon'ble Court. Hence, petition is liable to be dismissed.

4. During the enquiry for Petitioner WW1 was examined and Ex. W1 to W11 were marked. For Respondent no evidence was adduced. The matter was called arguments time and again, but, neither party evinced any interest in the proceedings. Inspite of giving fair opportunity Petitioner who is seeking for relief in this matter failed to take any interest in the proceedings. In the circumstances petition is dismissed.

Ordered accordingly.

Dictated to the Personal Assistant, transcribed by her corrected and pronounced by me on this the 11th day of June, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Shaik Umar Farook	NIL

Documents marked for the Petitioner/Workman

Ex. W1: Photostat copy of appointment letter dt. 11.9.2000

Ex. W 2: Photostat copy of another appointment letter dt. 3.10.2001

Ex. W 3: Photostat copy of merit certificate for exceeding of sales targets from Managing Director for 2000-01

Ex. W 4: Photostat copy of appreciation letter for performance dated 18.10.2003

Ex. W 5: Photostat copy of office order of transferring the Petitioner to Chennai Dt. 4.2.2004

Ex. W 6: Photostat copy of representation to Managing Director of WW1 dt. 1.9.2004

Ex. W 7: Photostat copy of another representation dt. 5.10.2004

Ex. W 8: Photostat copy of representation dt. 28.10.2004.

Ex. W 9: Photostat copy of another representation to HRD Manager dt. 29.3.2005

Ex. W 10: Photostat copy of pay slip of WW 1 for May, 2004

Ex. W 11: Photostat copy of office order accepting resignation of the WW1 dt. 5.7.2004

Documents marked for the Respondent

NIL

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 391.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 117/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 117/2007) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Bharat Sanchar Nigam Ltd., Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[F.No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi,
Presiding Officer

Dated the 8th day of October, 2013

INDUSTRIAL DISPUTE L.C. No. 117/2007

Between:

Sri Khaja Aneesuddin,
S/o Khaja Mohiuddin,
R/o 5-4-240, Gunj Street,
Jagityal, Karimnagar district ...Petitioner

AND

1. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
A.P. Circle, Abids, Hyderabad.

2. The General Manager,
Bharat Sanchar Nigam Ltd.,
Karimnagar.

3. The Sub Divisional Engineer,
Bharat Sanchar Nigam Ltd.,
Jagityal Sub Division, Jagityal,
Karimnagar

.....Respondents

Appearances:

For the Petitioner: M/s. A Radha Krishna & B.V. Kumar, Advocates

For the Respondent: Sri M.C. Jacob, Advocate

AWARD

Sri Khaja Aneesuddin, the Petitioner who worked as Mazdoor in the Respondent's organization has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Bharat Sanchar Nigam Ltd., seeking for declaring the oral termination order dated 15.7.1991 passed by the Respondent No. 1 as illegal, arbitrary and to set aside the same consequently directing the Respondent to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The Respondents filed counter stating that the prayer of the Petitioner to set aside the termination order of the Respondent has no substance and no relevance to the facts of the case but admiitting that Petitioner was engaged as casual mazdoor in September, 1986 under the control of 3rd Respondent. He was engaged as and when work is there in the Telecom Department and after completion of work he was disengaged. It is the further claim of the management that Petitioner was not in service of the Respondent organization in the year 1999 and subsequently also and that the petition is liable to be dismissed.

3. Petitioner filed his chief exaimination affidavit.

4. Case stand posted for cross examination of Petitioner as WWI. Petitioner called absent and there is no representation for him since long time. Inspite of giving fair opportunity Petitioner is not taking interest in the proceedings. In the circumstances, taking that Petitioner has got no interest in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Sri J. Vijaya Sarathi, UDC transcribed by him and corrected by me on this the 8th day of October, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
Nil	Nil

Documents marked for the Petitioner

Nil

Documents marked for the Respondent

Nil

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 392.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **डिप्टी जनरल मेनेजर (सैट कॉम), इ सी आई एल, हैदराबाद** के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 74/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 74/2005) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Deputy General Manager (SATCOM), ECIL Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi,
Presiding Officer

Dated the 4th day of September, 2013

INDUSTRIAL DISPUTE L.C. No. 74/2005

Between:

Sri M. Chandra Sekhar,
S/o M. Satyanarayana,
R/o H.No. C-12/11 ECIL
Hyderabad. ...Petitioner

AND

The Deputy General Manager (SAT-COM),
APD, (Disciplinary Authoirty),
ECIL Hyderabad. ...Respondent

Appearances:

For the Petitioner: M/s. G. Ravi Mohan, & G. Naresh Kumar, Advocates

For the Respondent: M/s. P. Nageswar Sree, K. Raghuram Reddy & Ch. Venkata Raju, Advocates

AWARD

Sri M. Chandra Sekhar, the Petitioner who worked as cleaner/helper in the Respondent's organization has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents ECIL seeking for declaring the termination order dated 8.8.2002 issued by the Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondent to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The Respondents filed counter stating that the prayer of the Petitioner to set aside the termination order of the Respondent has no substance and no relevance to the facts of the case. Petitioner was engaged on daily wage basis wage basis and subsequently appointed into the regular grade as Cleaner w.e.f. 1.10.1996 in the Respondent company. He was irregular to his duties as such he was counselled many times and issued with two charge sheets for unauthorized absence. After due enquiry and following the procedure he was terminiated. As scuh, the petition may be dismissed as he is not entiled for any relief.

3. Petitioner counsel filed memo conceding the validity of the domestic enquiry.

4. Case stands posted for arguments. At this stage, Petitioner's counsel filed memo dated 9.4.2013 stating that Petitioner died on 27.3.2013 and sought for time to bring his legal heirs on record. No steps were taken and there is no representation since long time. In the circumstances, the petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P.Phani Gowri, Personal Assitant transcribed by her corrected by me on this the 4th day of September, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesscs examined for the Petitioner	Witnesses examined for the Respondent
Nil	Nil

Documents marked for the Petitioner

Nil

Documents marked for the Respondent

Nil

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 393.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा के अनुसरण में केन्द्रीय सरकार सब-डिविजनल ऑफिसर, टेलिकॉम मेहबूबनगर के प्रबधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, हैदराबाद के पंचाट (संदर्भ संख्या 69/91) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/108/91-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, 17th Janaury, 2014

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 69/91) of the Central Government Industrial Tribunal/Labour Court-1, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer, Telecom, Mahboobnagar and their workman, which was received by the Central Government on 13/01/2014

[No. L-40012/108/91-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-I, AT HYDERABAD

Present : Sri N. Balayogi, B.Com., B.L., Chairman

Dated 10th day of June, 2013

I.D. No. 69 of 1991

BETWEEN:

Shri G. Shivaji,
H.No. 2-20, Nasrullabad,
Via Thimmajipet,
Mahaboobnagar (District) - 509 406 ...Petitioner

AND

1. The Sub-Divisional Officer,
Telecom, Nagar Kurnool,
Mahaboobnagar (District) - 509 209.

2. The Distt. Telecom Engineer,
Mahaboobnagar - 509 050. ...Respondents

This case is come up before me for final hearing on 06.03.2013 in the presence of Sri William Burra, Advocate for the Petitioner and Sri R.S. Murthy,. Advocate for the Respondents having stood over the same for consideration, this Court delivered the following Award:

AWARD

1. This Reference U/Sec. 10(2-A) of I.D. Act, 1947 for adjudication:

i) "Whether the management of Sub-Divisional office (Rural), Telecom, Nagar Kurnool is justified in terminating the services of Shri G. Shivaji with effect from 16.10.1989"?

ii) "if not, to what relief the workman is entitled to"?

2. The claim of the petitioner in brief is as follows:—

The petitioner was recruited and employed as Casual Mazdoor for 227 days without paying weekly offs from 12-1-1989 to 15-10-1989 except in the months of June & July 1989 and he was retrenched on the ground that he was recruited after 30-3-1985 contrary to the orders of Director General, P & T, New Delhi. The Petitioners was not given notice, or paid wages U/Sec. 25(F) of I.D. Act.

3. As per orders issued by the Telecom Department dated 7-11-1989 after absorption in the regular Establishment in his turn in the Seniority list and grant of temporary status in thus, incidental to his service in the T&D. Accordingly the retrenchment is illegal, null and void, consequently the petitioner is entitled to re-instatement in service with full back wages, continuity of service, protection of the seniority and all other benefits, consequential or incidental to the re-instatement.

4. The respondents filed their counter and contended that the petitioner was engaged as and when the work is available and there is no scope for any termination and violation of Sec. 25-F of I.D. Act. The order in W.P. No. 12286/1996 dated 2-7-1996 become final and was not questioned by the petitioner at any time and became resjudicata. The petitioner suppressed the fact of dismissal of W.P. No. 12285/1996.

5. The respondents further contended that the record now produced by the petitioner has mentioned performance in Gadwal and Jadcherla Sub-divisions which constitutes separate Establishment for the purpose of 240 days. The claim of the petitioner is based on mis-representation and suppression of facts which deserveds to be dismissed in-limini with exemplary costs.

6. The main I.D. No. 69/1991 was dismissed *vide* order dated 13.05.1994. Against the said award the petitioner filed W.P. No. 12285/1996 and the same was allowed while setting aside the award dated 13.05.1994 and the matter is remanded. Against the orders in W.P.No. 12285/1996 dated 07.02.2002 the respondent filed W.A. No. 560/2012 and the same was dismissed following the Judgement in W.A.No. 1084/2002.

7. On behalf of the petitioner W.W.1 examined. Ex. W1 to W6 are marked and on behalf of respondents M.W.1 was examined and no documents are marked.

8. Point:

(i) "Whether the management of Sub-Divisional office (Rural). Telecom, Nagar Kurnool is justified in terminating the services of Shri G. Shivaji with effect from 16.10.1989"?

(ii) "if not, to what relief the workman is entitled to"?

The learned cousnel for the petitioner contended that the petitioner completely worked for more than 240 days as such he is entitled for the benefit U/Sec. 25-F of the I.D. Act and that the respondents without issuing notice and complying the mandatory provisions under Sec. 25(F) of I.D. Act. Hence that act of the respondent is illegal and void. On the other hand, the respondents contended that the record produceed by the petitioner pertains to other reasons and the petitioner was engaged as and when work is available, hence is not entitled for the benefit of the provision U/Sec. 25-F of the I.D. Act. More so, the orders in W.P. No.12286/1996 dated 2-7-1996 become final and operate as res judicata on this ground alone the claim is liable to be rejected.

9. The petitioner himself is examined as WW1 and the S.D.O., Tele communication Sri K. Paramadhamayya of the Respondent Management is examined as MW1. The evidence of WW1 and MW1 is corroborated each other to the extent that the petitioner/WW1 was engaged for temporary works of laying cables, erection of poles and digging of trenches during the period 12.01.1989 to 15.10.1989.

10. The consistent evidence of WW1 is that after 15.10.1989 he was not engaged by the Respondent for any works during the 260 days (inclusive national holidays) actually worked for 227 days. Similarly the evidence of MW1 is that during the period from 12.01.1989 to 15.10.1989 WW1worked for 227 days. It is also evident from the evidence of WW1 and MW1 that during the month of May 1989 WW1 was not engaged and worked, this fact is clearly deposed by MW1 and admitted by WW1 during the cross examination.

11. Even according to the evidence in chief and admission during cross examination of WW1 that the 227 days are inclusive of weekly offs, national holidays and the days of cessation. Though in the evidence in chief WW1 stated that the days during the period from 12.01.1989

to 15.10.1989 are 277 days on both deposed that he worked for total number of days 260 inclusive of national holiday.

12. Since the burden of proof lies on the workman to prove that he actual worked 240 days during the period of one year, they have produced Ex.W6 Katcha register/record with details which was recorded and signed by the supervisors of the Respondents. The days of works were noted in Ex.W6. According to which they were 277 days out of which the petitioner worked only 227 days. Ex. W1 is the representation of WW1 to the Sub-Divisional officer, Tele Communication dated 02.03.1993, where under WW1 clearly stated that during the period from January, 1989 to June 1999 there are 133 days from July 1989 to October 1989, working days 94 totaling to 227 days. The entire representation is claiming the difference of wages. The petitioner/WW1 in the Ex. W1 clearly stated that he was not given paid weekly holidays and weekly offs for which no wages were paid to him. During the cross examination admitted that he was not paid salary or wages for those holidays and Sundays. Ex. W2 is another representation to the Regional Labour Commissioner showing the number of days worked in every month which comes to 227 days during the period from 12.01.1989 to 30.04.1989 and 01.06.1989 to 15.10.1989 excluding the month of May 1989, in which admittedly the petitioner/WW1 was not engaged for casual works. Ex.W3 in the parawise remarks of the Sub-Divisional Officer, Tele Communications to the Regional Labour Commissioner and Ex.W4 the rejoinder of the petitioner. The Ex.W5 is the Minutes of the Asst. Labour Commissioner, Hyderabad dated 20.06.1991 fiding that the cancellation ended in failure.

13. In support of the petitioner contention relied on a decision in Mohan lal Vs Management of M/s. Bharat Electronic Limited (1981) 3 SCC 225 where their lordships held that if immediately preceding the date of termination of service such workman actually worked for not less than 240 days within a period of 12 months under the employer, he will deemed to be in continuous service for one year under Sec. 25-B (2) (a)(ii) for the purpose of Chapter VA. It is not necessary for the purpose of clause (2) (A) that the workman should be in service for a period of one year.

The petitioner of WW1 deposed that in total of 260 days inclusive of National holidays worked for 227 days which is corroborated by the evidence of MW1 that during the period from 12.01.1989 to 15.10.1989 supported by Ex.W6 established that the petitioner actually worked 227 days.

14. Batala Coop. Sugar Mines Ltd., Vs Swarna Singh (2005) 8 SCC 481 where their lordships held that so far as the question of onus regarding working more than 240 days is concerns for the claimant to let evidence to show that he had in fact worked for 240 days in the year preceeding is termination.

Since the onus of is heavily on the claimant besides his oral evidence also filed Ex. WI representation of the petitioner where under he has shown the actual working days is 227 days during the period 01/1989 to 06/1989 and 07/1989 to 10/1989. During cross examination WW1 admitted and MW1 deposed that the during the month of May, 1989 there is a breaking work, which period is also excluded in Ex. W6. In Ex. W2 representation also the claimant excluding the month of May, 1989 submitted his working days in detail actually worked as 227 days. The same facts are also noted in Ex. W3 representation to the Labour Commissioner and found place in Ex. W4 para remarks and in the Ex. W5 Minutes of the meeting held on 20.06.1991.

Therefore, the evidence of WW1 corroborated with the adminission in the evidence of MW1 supported by Exs. W1 to W6 well established that during the period from 01.01.1989 to 15.10.1989 out of 260 days total working days the claimant actually worked 227 days.

15. *In Hariyana Urban Development Authority Vs O.M. Pal (2007) 2 SCC (L & S) 255 where their lordships held that once two establishments are help to be separate and distinct having different cadre strength of the workman the period during which the workman was working in one establishment could not ensure to his benefit when he was recruited separately in another establishment particularly when he was not transferred from one sub-division to other.*

16. In Hariyana State FCCW Store Limited and Another Vs Ramniwas and Another 2002 (5) ALD 14 (SC) where their lordhsips held that the workman engage for a specific purpose and termination on the completion of the purpose does not amount to retrenchment within the meaning of Sec. 2 (oo) (bb) of the Act.

And

In S.M. Nilajkar and others Vs Telecom, District Manager, Karnataka 2003 LHR 79 where their lordship held that the termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb). The engagement of the workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to the occurrence of some events. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of contract and the scheme or project coming to an end. The workman may not therefore compliant that by the act of the employer is employing was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is

for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said.

From the above decision it is very clear that for the purpose of Sec. 25B (2) (a), (ii) of I.D. Act for the purpose chapter V-A the workman shall actually work not less than 240 days within a period of 12 months immediately preceding the date of termination of service. Further to establish retrenchment within the meaning of sub-clause 2(bb) the workman shall not be engaged in a scheme or project in separate, distinct and different divisions for a specific purpose.

17. In the instant case the evidence of MW1 is that the WW1/Claimant was engaged as Casual Mazdoor for temporary works of laying cables, erection of poles and digging trenches, which is not regular work. He was never engaged continuously and there are breaches is engaging the claimant for casual works and during the entire month of May 1989 no work was entrusted to the claimant as there were no works. The Claimant as WW1 admitted that in the month of May 1989 he did not work which is also reflect from Ex. W6. Further his evidence that though he worked on Sundays not paid any salary.

Further the admissions of WW1 during cross examination that he worked at Jadcharla Nagarkurnool, Sub-Division for 20 days, later worked at Gadwal from 02/1989 to 04/1989. Again he worked at Jadcharla and there is break in works. The breaking works is shown in Ex. W2 as well as in Ex. W6 Kacha record.

18. The evidence of WW1 corroborated by the evidence of MW1 supported by Exs. W1 to W6 well established that out of the period from 01.01.1989 to 15.10.1989 there was no work for the claimant from 01.05.1989 to 30.05.1989. The Claimant was the Casual Mazdoor engaged for casual works in different sub-division Nagarkurnool and Gadwal, which are distinct and different divisions. The works for which the Claimant engaged in laying cables, erection of poles and digging trenches, are separate works in separate divisions as such there is no continuity of works engaged entrusted to the Claimant. According to MW1 the 227 days includes Sundays and national holidays, for whcih he was not paid salary which itself clinches the issue that the Claimant was not paid salary or wages even for the 227 days. Admittedly there is no appointment order in proof of that the Claimant was engaged for the casual works.

19. Relaying the decision in Hariyana State FCCW Store Limited and Another Vs Ramniwas and Another 2002(5) ALD 14 (SC), I find since the Claimant was engaged for a specific purpose of engaged in laying cables, erection of poles and digging trenches in different divisions Nagarkurnool and Gadwal in different periods and he was re-engaged after completion of the work at Jadcharla, Nagarkurnool sub-division at Gadwal division and again after completion of works at Gadwal Division, again freshly engaged at Jadcharla, Nagakurnool, Sub-division. There is no continuous engagement of works either regular nor temporary. The Claimant was dis-engaged due to non availability of work and the work for which the Claimant was engaged completed and no new work was taken up. He was never retrench or terminate, but on completion of work he was stopped to work. Accordingly the claimant workman was engaged for a specific purpose and after completion of the purpose there is no work, hence there is no literally retrenchment or termination within the meaning of Sec. 2(oo) and (bb) of I.D. Act.

20. In the decision *Pandicherry Khadi and Village Industries Board Vs P. Kulothangan and Another (2004) 1 SCC 68 where their lordship held that although the entire CPC is not applicable to Industrial adjudication, the principles of res-judicata laid down under Sec. 11 of C.P.C. are applicable including the principles of constructive res-judicator. Hence since the industrial dispute pertained to the same subject matter dealt with in the earlier proceedings it was barred by res-judicator.*

In the instant case there is no whisper about the alleged W.P. No. 12285/1996, W.P. No. 12185/1996, W.P. No. 13155/1996, Writ Appeal No. 1084/2002 and W.A. No. 560/2012, in the evidence of MW1, but gave a suggestion to the WW1 about the dismissal of Writ Petition and Writ Appeals for which the answer of WW1 is he was not aware of earlier dismissal of Writ petition and not stating the same in the Writ Appeal, hence he cannot say whether this Court has no jurisdiction to re-hear the matter. To substantiate the contention, the Respondents did not brought on record the orders in writ petitions and writ appeals. Accordingly there is no either oral or documentary evidence for consideration on the point of res-judicata.

21. In the facts and circumstances discussed above and findings therein, I find that the evidence of WW1 and the admissions made by MW1 supported by Exs. W1 to W6 well established that the Respondent engaged the Claimant as casual Mazdoor for the works laying cables, erection of poles and digging of trenches during the period from 01.01.1989 to 30.04.1989 and again 01.06.1989 to 15.10.1989 with breaking service in different, separate and distinct Jadcharla in Nagarkunool sub-division and Gadwal Division of the above purpose and after completion schedule works the Claimant was dis-engaged. The Claimant himself deposed that he was not paid wages for Sundays worked. Accordingly for the actual working days only the claimant was paid wages, out of 260 days of work the claimant worked only for 227 days including Sundays. Accordingly the claimant did not work 240 days within a period of 12 months under the employer to treat as continuous service for one year under Sec. 25-B(2)(a)(ii) to say that the Claimant was terminated in violation of Sec. 25-F of I.D. Act.

22. The Claimant was disengage due to non availability of work. Since the claimant was engaged for a specific purpose and after completion of the said work, he was disengaged, which does not amount to retrenchment or termination within the meaning of Sec. 2(oo) and (bb) of I.D. Act. There is no retrenchment or termination in violation of Sec. 25-F of I.D. Act. Accordingly the Petitioner/Claimant is not entitled for any declaration and relief as prayed for.

23. In the result, the petition is dismissed and the petitioner is not entitled for any relief. Reference is answered accordingly.

Typed to my dictation directly to the Steno typist on the computer, corrected and pronounced in the open court on this the 10th day of June, 2013.

N. BALAYOGI, Chairman

APPENDIX OF EVIDENCE

Witness examined for Petitioner	Witness examined for Respondents
W W 1 G. Shivaji	M W 1 K. Paramadhamayya

Documents Marked for Petitioner

Ex.W1	02.03.1993	Representation of petitioner.
Ex.W2	21.11.1990	Copy of complaint given to Regional Labour Officer.
Ex.W3	10.01.1991	Copy of remarks of Respondent.
Ex.W4	15.05.1991	Copy of rejoinder of workman.
Ex.W5	20.06.1991	Copy of Minutes of meeting.
After remand		
Ex.W6	--	Katcha record

Documents Marked for Respondents

NIL

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब-डिविजनल ऑफिसर, टेलिकॉम, वेस्ट गोदावरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 15/96) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं. एल-40012/238/94-आईआर (डीयू)]
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 15/96) of the Central Government Industrial Tribunal/Labour Court-1 , Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Officer, Telecome, West Godavari and their workman, which was received by the Central Government on 13/01/2014.

[No. L-40012/238/94-IR(DU)]

P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-I AT HYDERABAD.

Present : Sri N. Balayogi, B. Com., B.L., Chairman

Dated 24th day of October, 2013,

I.D. No. 15 of 1996

Between:

Sri M.V. Krishna Rao,
S/o M. Satyam (Late) Aged about 52 years,
O/o Sub-Divisional Engineer Urban,
Methevari Building,
BSNL Office, Eluru,
West Godavari Dist. ...Petitioner

AND

1. The Sub-Divisional Officer,
Telecommunication
Nidadavole,
West Godavari Dist- 534-301,
Andhra Pradesh. ....Respondent

This case is come up before me for final hearing on 04.09.2013 in the presence of Sri William Burra, Advocate for the Petitioner and Sri R.S, Murthy, Advocate for the Respondent having stood over the same for consideration, this Court delivered the following Award:

AWARD

1. This is a reference under Sec. 10 (i) (d) (2-A) of I.D. Act 1947 for adjudication:

1. "Whether the action of the Management of Telecome District Manager, Eluru is justified in terminating the services of Shri M.V. Krishna Rao without conducting a fresh enquiry?

(2) If not, to what relief the workman concerned is entitled to?"

2. The petitioner filed claim statement contending that he was initially recruited and employed as casual Mazdoor w.e.f 01.05.1983. Two months later he was selected for employment on daily wages. On the ground of negligence for loss of cable, he was terminated from service

w.e.f. 9.05.1988 without complying the mandatory provisions of I.D. Act requiring issue of one month notice. The formal termination notice was served on the petitioner on 09.06.1988.

3. On that the petitioner filed O.A. No. 537/1988. The Administrative Tribunal set aside the termination orders by its order dated 02.08.1989. The petitioner was employed for a period from 16.09.1989 to 30.09.1999 showing his name as usual in the M/Rs. But his name was removed from the M/Rs. from 01.10.1989. The petitioner was discontinued from work through his juniors were continued his service. Removing his name from M/Rs. is retrenchment.

4. The provision of Rule 77 of the Industrial Tribunal (Central) Rules 1957 were not complied with and even the directions of the D.G.P & T not retrench a senior while the juniors continue in service have also not followed.

5. The Respondent issued letter dated 15.09.1989 calling upon the explanation for the Petitioner on or before 30.09.1989. The petitioner submitted his explanation on 30.10.1989. The UTO Kovvuru issued letter dated 26.05.1988 alleging that the petitioner failed to intimate immediately alleged that are to show cause why he services could not be terminated or recommended to be terminated. The JTO Kovvuru did not allege that the theft is due to negligence of the petitioner. The criminal; case before II Add;. JFCM, was closed as "undetectable".

6. The petitioner filed O.A. No. 1007/1990 before the CAT and the same was dismissed. No enquiry was held under any rules for orders including any certified standing orders or even under the model standing orders, if no certified standing orders are available. Therefore the termination of the petitioner from service without any enquiry as per the directions of the CAT is illegal and vaxatious.

7. The Respondent filed counter denying the averments of petition and contended that a cable drum was placed in the exchange compound on the evening of 06.05.1988, when the petitioner was on duty. In the morning on 08.05.1988 the petitioner noticed theft of cable drum. For the same was not informed to the JTO concerned on the day.

8. A departmental open enquiry was conducted by the D.E. Telecommunications on 09.06.1988, who concluded that both Watchmen, the petitioner herein and Sri N. Shyam Prasad were responsible for the loss. As per the D.E.T. oral instructions dated 09.06.1988 both the Watchmen were informed that their services are not required, hence no work was allotted to them while pending enquiry. Accordingly the services of the petitioner was not terminated, but only not allotted any work until enquiry proceedings were issued.

9. As per the directions of the CAT in O.A. No. 537/1988, the petitioner was reinstated w.e.f. 15.09.1989. Since CCS/CCA Rules does not apply to the casual mazdoor and the petitioner is not a regular employee, no departmental enquiry can be initiated against the petitioner. Hence a fresh explanation is called for vide letter dated 15.09.1989 giving 10 days time for negligence of duty. The petitioner received the notice on 19.09.1989, instead of submitting explanation before 28.09.1989, he submitted letter dated 30.09.1989 requesting five more days time to give reply. Till 31.10.1989 no explanation was received from the petitioner. Finally termination order was issued to the petitioner on 31.10.1989.

10. The petitioner was engaged during 15.09.1989 to 31.10.1989 and his name was written in M.Rs. Since termination notice was issued on 31.10.1989 and one month wages were paid in lieu of one month notice, the petitioner was not taken to duty from 01.11.1989. He was terminated from service, but not retrenched.

11. The JTO in his letter dated 26.05.1989 asked the petitioner about his failure to intimate missing of cable on 08.05.1988. The police compliant was regarding missing of cable, but not failure of petitioner in discharging his duties, Hence the judgment in criminal case is not concerned with negligence of duty. Sri. S.S. Vali, the S.I. was issued with cable. Since the petitioner is not a regular employee no disciplinary action can be taken against him as directed by CAT. The termination of the petitioner was not at all illegal and it is as per rules. The employee of Telecom department is not a workman for the purpose of I.D. Act, hence this petition is not maintainable.

12. On behalf of the petitioner WWs 1 & 2 are examined and Exs. W1 to W24 are marked. On behalf of the Respondent MWs 1 & 2 are examined and Exs. M1 to M20 are marked.

13. Both petitioner and Respondent filed their written arguments respectively.

14. Point No. 1:

"*Whether the action of the Management of Telecom District Manager, Eluru is justified in terminating the services of Shri M.V. Krishna Rao without conducting a fresh enquiry?*"

The petitioner filed written arguments and contended that the casual mazdoor is also a workman and the termination amounts to retrenchment, for which the conditions under Sec. 25 has to be fulfilled. On the other hand, the Respondent contended that Telecom Communication Department is not an Industry, hence the petitioner is not a workman to attract the provisions under I.D. Act.

The petitioner herein is examined as WWI besides examining the Wireman as WW2. The D.E.,

Telecommunications and the Sub-Divisional Engineer of the Respondent are examined as MWs 1 & 2. The undisputed facts spell out from the evidence of WW1 and MW 1 are that the petitioner was initially appointed as Casual Mazdoor on 29.04.1983, w.e.f. 01.05.1983. Ex. W1 dated 29.06.1983 is the selection proceedings of the petitioner in pursuance of interview dated 29.04.1983. Subsequently the SDO, Telecommunications issued Ex. W2 proceedings dated 08.10.1986 accorded payment of increased casual wages including the petitioner casual mazdoors, who have completed 720 days in three years as on 1.04.1986. The working days particulars in respect of the petitioner were noted and certified in Ex.W3 workbook for the actual days worked during period from 01.05.1983 to 30.09.1989. Ex. W4 is the personal record of employment and muster rolls pertains to the petitioner for the period from 02.01.1987 to 01.04.1988. The JTO, Kuvvru under Ex.W5 working sheet certified that the petitioner has worked 342 days during the year 1985-1986, 345 days during the year 1986-1987 and 344 days during the year 1987-1988 in total 1041 days. There is no cross examination of WW1 on Exs.W1 to W5. In Ex.W2 dated 08.10.1986 the SDOT certified that the petitioner has completed 720 days in the three years as on 01.04.1986. In the Ex.W1 appointment letter also the SDOT, Nidadavole, clearly noted that the petitioner has been working at different places was interviewed on 29.04.1983.

15. The evidence of WW1 remained unchallenged and supported by Exs.W1 to W5 well established that the petitioner was appointed as casual mazdoor on his sponsor by employment exchange in the interview held on 29.04.1983 and since then till termination on 09.05.1988. He worked more than five years till termination, since 01.05.1983. The existing wages as on 08.10.1986 noted in Ex.W2 was Rs. 10.50 ps, which was enhanced to Rs. 15 per day w.e.f. 01.04.1986. The Ex.M18 payment sheet for the month of 10/1989 established that the petitioner was paid Rs. 1,005 towards monthly wage in that particular month. Accordingly the monthly wage of the petitioner as on 1989 was Rs. 1,005. The petitioner worked more than 240 days within twelve months period. Accordingly the petitioner worked more than five years as on the date of termination w.e.f. 9.05.1988.

16. The petitioner contention is that he is a workman within the meaning of Sec. 2(S) of I.D. Act, whereas the Respondent contention is that he engaged as a casual mazdoor, due to shortage of "D" staff, hence he is not a workman. In support of the petitioner contention relied on decision in Dharangadhara Chemical Works Limited Vs State of Saurashtra and others [1957 SC 264(1)] where their lordship held that the essential condition of a person being a workman within the terms of definition in Sec. 2(s) of I.D. Act is that he should be employed to do the work in the Industry, that there should be in other words an employment of his by the employer that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless the person is thus employed there can be no question of his being the workman within the definition of the terms as contained in the Act.

In another case relied on by the Respondent in The Divisional Superintendent (now called Divisional Railway Manager) SC Railways, Vijayawada and Others Vs The Labour court, (Central), Guntur and another [1987 (2) ALT 119] where their lordship held that a casual labour, who acquires temporary status by virtue of continues employment of a period of six months does not become a temporary railway servant, he does not become a member of railway service either temporarily or permanently. In such case where a casual labour claims to have acquired temporary status does not fall within the four corners of Sec. 14(1)(a) of Administrative Tribunals Act.

In the instant case, the evidence of WW1 and MW1 is that the petitioner was initially appointed as Casual Mazdoor on 29.04.1983 w.e.f. 01.05.1983. Ex.W1 selection proceedings goes to suggest that in pursuance of interview on 29.07.1983 the petitioner was appointed as Casual Mazdoor. The increased wages were paid to WW1 along with others as per Ex.W2, who had completed 720 days of service as on 01.04.1986. Ex.W3 workbook and Ex.W4 personal record of the petitioner, Ex.W5 work sheet certificate, corroborated with the evidence of WW! and admitted by MW1 well established that the petitioner had worked 342 days during 1985-1986, 345 days during 1986-1987 and 344 days during 1987-1988 in total he worked 1,041 days till 1988 i.e. till termination on 09.08.1988. His monthly pay was Rs. 1,005 by 1989. Accordingly the petitioner worked more than 240 days within twelve months period. There is employer and employee relationship between the petitioner and the Respondent, which is not disputed by the Respondent. The Respondent is having supervision and control over the work of the petitioner in the matter of entrustment of duties and also the manner in which the petitioner has to work. Therefore, the petitioner is a workman within the meaning of Sec. 2(s) of I.D. Act.

17. The further contention of the Respondent is that the Telecom Department is not an Industry, hence the petition under the reference of Sec. 10(1d) (2-A) of I.D. Act is not maintainable. On the other hand, the petitioner contended that the Telecom Department is an Industry as under Sec. 2(j) of I.D. Act, hence this reference is maintainable.

In the decision relied on by the Respondent reported in Sub-Divisional Inspector of post, VAIKAM and others Vs Theyyam Joseph etc. [1996 (72) FLR 690] where their lordships held that directive principles of State policy enjoin on the state diverse duties under part-IV of the constitution and performance of the duties are constitutional functions. One of the duty is of the state to provide Telecom Service to the general public and an

amenity, and so is one essential part of the sovereign functions of the State as a welfare state. It is not therefore an Industry within the definition of Sec. 2(j) of the I.D. Act 1947.

This decision was considered by the Hon'ble Supreme Court of India and was over ruled. In the case of General Manager, Telecom Vs. S. Srinivas Rao and Others (AIR 1998 Supreme Court 656) where their lordship held "incidentally the decision in Theyyam Joseph's case was rendered without any reference to the Seven-Judge Bench decision in Bangalore Water supply (AIR 1978 SC 548) (supra). In a later two-Judge Bench decision in Bombay Telephone Canteen Employees Associations case (AIR 1997 SC 2817) this decision was followed for taking the new that their Telephone Nigam is not an "Industry". Reliance was placed in Theyyam Joseph's case (1996 AIR SCW 1365) (Supra) for that view. However in Bombay Telephone Canteen Employees Associations case we find a reference to the Bangalore Water Supply case. After referring to the decision in Bangalore Water Supply it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequences is "catastrophic". With respect we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in Bangalore Water Supply case (supra) by which we are bound. It is needless to add that it is not permissible for us or for that matter any bench of lesser strength, to take a view contrary to that in Bangalore Water Supply (supra) or to by-pass that decision so long as it holds the field. Moreover the decision was rendered long back-nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Banglaore Water Supply case. We must therefore add that the decision in Theyyam Joseph (1996 AIR SCW 1365) and Bombay Telecom Canteen Employees Association AIR 1997 SC 2817 cannot be treated as laying down the correct law.

In the instant case as find in the earlier paragraph that the petitioner was initially appointed as casual Mazdoor w.e.f. 01.05.1983. By 01.04.1986 he has completed 720 days of service and 1041 days of service by 09.08.1988, on which date he was terminated. By 1989 the monthly pay of the petitioner was Rs. 1,005. Accordingly the petitioner worked more than 240 days within 12 months period, there is employer and employee relationship between the petitioner and the Respondent. The Respondent is having supervision and control over the work of the petitioner in the matter of entrustment of duties and also the manner in which the petitioner has to work, accordingly the petitioner is a workman within the definition of Sec. 2(s) of I.D. Act. MW1 clearly deposed that Sri K.S.V.R. Prasad JTO, was in-charge of Kuvvuru under SDOT Nidadavole. During cross examination MW1 admitted that the petitioner worked as Watchman for sometime and in other occasions worked in indoors.

18. Though the Respondent took a specific plea that the Telecom Department is not an Industry as defined under Sec. 2(j) of I.D. Act, 1947, it would not adduce any oral or documentary evidence. The Telecommunication Department is engaged in a commercial activity and the Department is not engaged in discharging any of the sovereign functions of the State.

19. In the present case the petitioner herein filed W.P. No. 7967/1998 seeking to set aside the Award in I.D. No. 15/1996 dated 30.06.1997 R/W I.A.No. 246/1996 on the file of this Tribunal. The Hon'ble High Court of A.P. disposed of W.P. No. 7967/1998 on 06.08.1999 in terms of Judgment in W.P. No. 7987/1998.

The Hon'ble High Court disposed of in W.P. No. 7987/1998 on 21.12.1998 holding that in the light of decision in the case of General Manager, Telecom Vs. A. Srinivas Rao (AIR 1998 SC 656) where under the Department of Telecommunication was declared as Industry, while setting aside the Award in I.D. No. 30/1996 dated 29.06.1997 and the matter is remanded back for fresh consideration.

20. In the fact and circumstances discussed above, I find that the Hon'ble High Court in the present case in I.D. No. 15/1996, itself relying on decision in General Manager, Telecom Vs. A. Srinivas Rao (AIR 1998 SC 656) where under held that the Department of Telecommunication was declared as Industry. Accordingly, I find that Telecommunication is an Industry as defined under Sec. 2(j) of I.D. Act, 1947 and the petitioner is a workman as defined under Sec. 2(s) of I.D. Act.

21. The further contention of the petitioner is that since the petitioner is a workman entitled for the benefit of Sec. 25-F of the I.D. Act. On the other hand, the Respondent contended that as the Management lost the confidence decided to disengage the petitioner under Sec. 25-F of I.D. Act. The petitioner is not governed by CCA rules except opportunity having regard to principles of natural justice.

In the case of State Bank of India Vs Sri N. Sundara Money AIR 1976 SC 1111(1) where their lordships held that whatever the reason every termination spells retrenchment. So the sole question is has the employee's services has been terminated. Termination embraces not merely the act of the termination by the employer, but the fact of termination however produced. May be the present may be a hard case, but we can visualize abuses by employers by suitable verbal devices, circumventing the armour of Sec. 25-F and Sec. 2(oo) of I.D. Act.

In the instant case the evidence of WW1 is that while he was working as casual mazdoor, the JTO telephones Kovvuru issued Ex.W6 dated 26.05.1988 calling for his explanation for the theft of 20 pairs of cable from the telephone exchange on 08.05.1988. Which fact is also evident from the evidence of MW1 that on 06.05.1988 theWW1 the was the Watchman who received the material and signed Ex.M2 entry in Ex. M1 stores register,

acknowledging that the petitioner received from Sri S.S. Vali, S.I., (P) Kovvuru, 20 pairs of cable drum. The receipt and acknowledgement under Ex. M2 in the Ex. M1 is not disputed by the petitioner. Therefore, it is evident that the petitioner was the Watchman and received 20 pairs of cable drum by making entry in the Stores register/ Ex. M1 by acknowledgement under Ex. M2 relevant entry dated 06.05.1988.

22. The evidence of MW1 further established that WW1 presented Ex. M3 dated 09.05.1988 report to the Jr. Telecomm Officer stating that WW1 found missing of drum containing 20 pairs of cable on 08.05.1988. One Shri Shyam Prasad was night Watchman on 06.05.1988 and WW1 was Watchman on 07.05.1988. On the night 07.05.1988 Sri Shyam Prasad was the night Watchman. On 8.05.1988 morning WW1 is the Watchman and on the evening of 08.05.1988 one Sri Jairaj was the night Watchman. In the morning of 09.05.1988 WW1 reported the missing of cable drum in the report under Ex. M3. Actually WW1 found missing of the drum in the morning of 08.05.1988 itself, but not reported to the Jr. Telecomm Officer. The evidence of WW1 supported by Ex.W8 goes to suggest that on 09.05.1988 at 5.30 p.m. the Jr. Telecomm Officer submitted a report to the police alleging that there was a theft of cable drum in between 19 hrs. on 07.05.1988 to 7 hrs. on 08.05.1988. The police after investigation filed final report under Ex.W9 referring the case as "undetectable". The II Addl. Munsiff Magistrate Kovuur by its order under Ex.W10 dated 05.10.1988 recorded Ex.W9 as "undetectable" and closed the case.

23. The evidence of WW1 further established that this Tribunal passed an Award in I.D. No. 15/1996 dated 31.12.1999 directing the Respondent to reinstate the petitioner into service within 30 days from the date of publication of the Award and futher held that the petitioner is entitled to wages from 01.01.2000 irrespective of the petitioner is reinstated. Aggrieved by the orders in this I.D. No. 15/1996 dated 31.12.1999 the Respondent preferred W.P. No. 760/2001, which was allowed on 28.02.2012 while setting aside the Award in I.D. No. 15/1996 dated 31.12.1999 and remanded the matter for fresh disposal.

24. The evidence of WW1 and admission of MW1 further established that in pursuance of interim orders in W.P.M.P. No. 879/2001 dated 23.01.2001 in W.P. No. 760/ 2001 the petitioner was reinstated on 26.02.2001. The Sec. 25-F connotes that the workman shall be given one month notice or pay one month salary in lieu of notice and shall be paid compensation which is equalent to 15 days average pay for every completed year of service before retrenchment of the employee. The evidence of MW1 is silent with regard to one month notice or payment of salary in lieu of one month notice as contemplated under Sec. 25-F of I.D. Act.

25. The termination order Ex. M19 goes to suggest that the petitioner was terminated from the service of casual Mazdoor w.e.f. today i.e. 31.10.1989. With regard to payment of one month salary Ex. M19 contains the words "you are herewith paid one month salary in lieu of notice". The mode of payment of one month salary is not noted in Ex. M19. If really the one month salary in lieu of notice was paid by way of D.D. or Cheque or Banker challan or M.O., it should have contain the number and date of the document by enclosing to the Ex. M19. More ever MW2 during cross examination deposed that the Management followed the procedure under Sec. 25-F of I.D. Act before termination, he has no idea whether any compensation were paid to the petitioner. Which itself shows that the own witness of the Respondent MW2 is uncertain about the compliance of Sec. 25-F of I.D. Act which is mandatory. MW1 during evidence is chief though deposed that WW1 worked on 31.10.1989 and one month wages in lieu of one month notice was paid to him. He did not produce any proof of payment of one month salary in lieu of notice. In the absence of any such convincing oral or documentary evidence, I find that the Respondent has not complied the provisions and conditions stipulated under Sec. 25-F of I.D. Act.

26. The petitioner further contended that the Respondent while continuing the juniors in service terminated the petitioner which is against Sec. 25-G of I.D. Act. In support of his contention relied in a case Jaipur Development Authority *Vs.* Ramsahai and Another (2006) 11 SCC 684 where their lordships held that Sec. 25-G introduces the rule of "last come first go". It is not a rule which is imperative in nature. The said rule would be applicable when a workman belongs to a particular category of workmen. An employer would in terms thereof, the ordinary required to retrench the workman who was the last person to be employed in that category. However, for reasons to recorded the employer may retrench any other workman.

In the instant case the evidence of WW1 is that the petitioner was terminated without conducting any enquiry as contemplated under the rules and standing orders of the Respondent. However, he was terminated and subsequently reinstated as Casual Mazdoor w.e.f. 15.09.1989 under Ex. W12 proceedings issued by the JTO, Kovvuru. He was employed from 16.09.1989 to 30.09.1989 showing his name in muster rolls and he was employed on 01.10.1989 also, but his name is not shown in the muster rolls and the wage was paid on ACG-17 voucher. From 02.10.1989 he was discontinued from service and again employed during 16.10.1989 to 31.10.1989 without showing his name in the muster rolls, while his juniors Sri B. Prakash Rao, Sri O. Manohar Kumar, Sri B. Appala Swamy, and Sri K. Samuel who came from other Units to Nidadavol Sub-Division for continuation in service, but they were later terminated. Similarly Sri J. Ganaiah, Sri B. Srinivasa Rao, Sri K. Satyanarayana, Sri. G. Satyanarayana and Sri Chitti Babu

who are also to the Juniors to the petitioner continued in the SDOT office, Nidadavol as casual mazdoor. There are other juniors who are also continued in service like Sri Satyanarayana, Sri P. Vijaya Kumar, Sri Ganesh and Sri Sharif, Sri Ramarao, Sri Prasad, Sri George Mullar, Sri V. Samuel, Sri Bothaiah as per the Ex.W13 seniority list of Mazdoor workers as on 31.03.1987. As can be seen from Ex.W13 the workers at serial no. 16 to 40 outdoor mazdoor have less number of working day as compared the petitioner, similarly the indoor mazdoor at serial no. 7 to 9 who were from other sub-divisions are also juniors to the petitioner. Inspite of the consistent plea and evidence of WW1, the Respondent did not choose to cross examine WW1 with regard to continuing his juniors in service terminated the petitioner. In the absence of any such cross examination of WW1 on the about aspects, I find that the Respondent is not disputing the fact that the petitioner was terminated while continuing his juniors in service, which is in gross violation of Sec. 25-G of I.D. Act the rule of last come first go. Accordingly the termination of petitioner while continuing in service his juniors is in violation of Sec. 25-F of I.D. Act.

27. The contention of the Respondent is that the petitioner was terminated for his negligence in duties, in not reporting the theft immediately and on the ground loss of confidence. On the other hand the petitioner contended that the termination without an enquiry is illegal.

In support of the Respondent contention relied on decision Divisional Controller, Karnatake State Road Transportation *Vs.* N.G. Vittal Rao (2012) 1 SCC 442 where their lordship held that an employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. Loss of confidence cannot be subjective but there must be objective facts which would lead to definite interference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved. In a case of misconduct of grave nature like corruption or theft, no punishment other then the dismissal may be appropriate.

In the instant case the evidence of MW1 corroborated with MW2 and supported by Exs.M1 to M6 and the admissions made in the evidence of WW1 goes to suggest that on 06.05.1988 WW1 was the Watchman, who signed and acknowledged under Ex.W2, the receipt of 20 pairs of cable length for about 118 meters in the Ex.M1 stores register. On 08.05.1988 at 10.00 a.m. WW1 noticed the missing of the cable drum, but he submitted the report on 09.05.1988 and surprised the theft which the WW1 noticed on 08.05.1988 till 09.05.1988. On that the JTO, has submitted FIR which was registered as crime No. 63/1988 under Ex.W8. On that the WW1 was put-off service as per Ex.W7 without allotting any work. A memo under Ex.W6/ Ex.M4 dated 26.05.1988 was issued to the WW1 calling for his explanation for alleged failure to intimate the theft immediately to the JTO (phones), Kovvuru. The petitioner submitted his explanation under Ex.W15 to the letter under Ex.W14 stating that there is a conflicting allegations in the letter of the JTO and the Sub-Divisional Officer that in the letter the allegations the theft occur due to negligence of the duty, where as the JTO Kovvuru, in the letter dated 25.08.1988 alleged failure to intimate the alleged theft immediately. Further the evidence of WW1 is that there is no negligence on his part the wire was not theft and he made Ex.M5 representation stating that on enquiries he came to know that the cable drum with the S.I. Sri. S.S. Valli and so he could not intimate the same immediately.

28. To substantiate the said reply the petitioner examined Sri G. Nageshwar Rao, Wireman as WW2 who produced his identity card Ex.W22 and appointment letter Ex.W23 showing that the petitioner Sri G. Nageshware Rao is a Wireman in the Telecommunication Department as per the appointment letter dated 01.01.1981 Ex.W23. The evidence of WW2 supported by Exs.W22 & 23 well established that WW2 is a Wireman and employee in the Telecommunication Department.

29. The consistent evidence of WW1 & WW2 corroborated and supported by Exs.W15 & M5 goes to suggest that the S.I. Sri S. Valli has already utilized the cable wire. The police after investigation filed referred charge sheet under Ex.W9 which was recorded by the Court under Ex.W10 as "Undetectable".

In view of the very consistent evidence of WW1 & WW2 that Sri S. Valli, S.I. utilized the cable and the police referred the FIR after thorough investigation as undetectable the evidence of Sri S.S. Valli is of material, but the management could not choose to examined the said Sri S.S. Valli as a witness to prove the allegation of theft while WW1 was on duty. Absolutely there is no evidence that due to negligence of the petitioner the theft was committed. The Management made inconsistent allegations against the petitioner. The JTO alleged that the petitioner was negligent in not reporting the theft immediately, whereas the Sub-Divisional (Phones) alleged that the theft was due to the negligence of the petitioner.

30. In the facts and circumstances discussed above, I find that the Management failed to established any negligence on the part of the petitioner, whereas the petitioner by examining himself as WW1 and the other Wireman as WW2 rebutted the allegations of negligence, by establishing that Sri S.S. Valli, S.I. utilized the cable wire.

31. The evidence of WW1 supported by Ex.W11 goes to suggest that the CAT under Ex.W11 ordered reinstatement of the petitioner, the back wages and the period shall be decided as per the result of the Departmental enquiry.

32. In the above decision the lordships observed that even if a person stands acquitted by a Criminal Court, domestic enquiry can be heard since standard of rules required in a domestic enquiry and that in a criminal case is different. In the evidence WW1 clearly stated that no domestic enquiry was conducted. MW1 deposed that as per the Divisional Engg. Telecommunication proceedings after an open enquiry under Ex.M10 the petitioner was terminated from service. During cross examination MW1 stated that he was not aware whether there are any rules or orders or instructions under which an enquiry has to be conducted against casual workman. There is no any departmental enquiry against the petitioner before issuing termination order Ex.M19. MW2 also stated that he do not know whether the Divisional Engg. was appointed as Enquiry Officer, he issued any notice to the petitioner fixing the date of enquiry, recorded any evidence of the witnesses and submitted any report. The petitioner belatedly Ex.M17 explanation to the Management, but according to MW2 he has no acknowledge whether the Management has considered the Ex.M17 explanation of the petitioner. MW2 the responsible officer is also not aware whether any charge memo was issued to the petitioner. The evidence of MW1 and MW2 does not inspire any confidence to established any such enquiry was held before termination. Even according to the termination orders the petitioner was terminated basing on the only open enquiry report under Ex.M10 submitted by the sub-divisional Engg., which is only a fact find enquiry, but not a detailed final domestic enquiry report. The Ex.M10 open enquiry report itself is not sufficient to terminate the services of the petitioner.

33. The facts and circumstances discussed above goes to suggest that there is no any such domestic enquiry following the principles of natural justice giving opportunity to abduce evidence. The termination of petitioner is biased, who is put in more than 1041 days and he is selected by conducting due interview and issued appointment orders as Casual Mazdoor and subsequently he was paid enhanced salaries, accordingly he was a temporary employee of the Respondent. The petitioner who worked more than 1041 days continuously acquired temporary status. There is no break in service.

34. The termination of the petitioner spells retrenchment on the ground loss of confidence for non-reporting theft immediately. It is not the allegation that the petitioner has committed any theft or the termination was on the ground of misconduct. In view of the clear findings that the Respondent failed to established any negligence on his part. The very termination of the petitioner from service is in gross violation of Sec.25-F R/W Sec.25-B and Sec.25-G of I.D. Act, without following the principles of natural justice and conducting enquiry in accordance with standing orders or rules of the Respondent.

35. In the decision in Jagbir Singh *Vs.* Haryana State Agriculture Marking Board and another (2010) 1 SCC (L & S) 545 where their lordships held that if the termination of an employee was found to be illegal the relief of reinstatement with full back wages would ordinarily follow. However in recent past there has been a shift in the legal position and in a long line of cases the Supreme Court has consistently taken the view that the relief by way of reinstatement with back wages is not automatic and may be wholly in appropriate in a given fact situation even though the termination of an employee is an contravention of the prescribed procedure.

An order of retrenchment passed in violation of Sec. 25-F although may be set aside, but an Award of reinstatement should not be automatically passed. The Award of reinstatement of full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year proceeding the date of termination has not be found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice.

In the said case, the employee was engaged as a daily wager on 01.09.1995. He was paid consolidated monthly wages of Rs. 1,498. He worked upto 18.07.1996. Thereafter his services came to an end. But in the present case the facts are different.

In the instant case the petitioner was interviewed on 29.04.1983 in pursuance of sponsored by Employment Exchange and he was appointed as daily wager. On interview as per Ex. W1 and he has completed 720 days in a period of three years as per Ex. W2 proceedings and he worked 1041 days during the period from 01.04.1985 to 26.03.1988 under Ex. W5, accordingly the petitioner has become temporary employee. He was terminated on the allegation that he was negligent in not intimating theft immediately. But not on completion of term. Therefore the above decision has no application to the facts of the present case.

36. In Eagle Fashions Vs Secretary (Labour) and others 1999 LLJ 232 where their lordships held that in a reference under Sec. 10 of the Act the term of reference should be clearly spelled out between the parities on the real dispute and it is not so, the order of the reference is liable to be interfered in it writ proceedings.

In the said case the term of reference has not been properly drawn up hence the reference is held vitiated. In the instant case there is a clear reference for adjudication of dispute.

1. "Whether the action of the Management of Telecom District Manager, Eluru is justified in terminating the services of Shri M.V. Krishna Rao without conducting a fresh enquiry?

2. If not, to what relief the workman concerned is entitled to?"

To prove the dispute the Management examined two witnesses MW1 & MW2 and produced Exs. M1 to M20. The petitioner produced WW1 & WW2 and marked Exs. W1 to W24. The SDTO issued Ex. W14 dated 15.09.1989 signed on 16.09.1989 alleging due to negligence of WW1 the theft has been committed and called for his explanation within 10 days. The petitioner submitted Ex. W15 explanation dated 31.10.1989. The JTO issued memo Ex. W6 alleging that the petitioner failed to intimate the theft immediately. WW1 clearly explained the delay has he enquired from other workers, therefore the petitioner filed OA No. 1007/90 questioning the termination which was dismissed under Ex. W16. Then the petitioner approached the RLC under Ex. W17. The SDTO issued Ex. W18 letter to the Conciliation Officer. The conciliation Officer conducted proceedings under Ex. W19 and issued the proceeding under Ex. W20 datred 23.09.1994 Minutes and submitted Ex. W21 FOC. In pursuance of orders under Ex. W11 the petitioner was appointed under Ex. W12 and after reinstatement the Respondent issued Ex. W14 notice then again he approached the CAT which was dismissed as per orders under Ex. W16. Then the petitioner Ex. W17 representation to the Labour Department, which gave reply under Ex. W18 rejecting the request of the petitioner to condone the delay in raising the dispute. The Central Government referred the dispute under Sub-Sec. 10(1) (2A) of I.D. Act for adjudication accordingly this Tribunal entertained the dispute. Hence there is no delay in entertain the dispute as referred.

37. In the facts and circumstances discussed above and findings therein, I find that the petitioner is a temporary employee who put in 1041 days of continuous service within a period of 01.05.1985 to 26.03.1988 under Ex. W5. The Respondent failed to prove any negligence in discharge legitimate duties. The Respondent without following the principles to natural justice and conducting any domestic enquiry simply on open enquiry under Ex. M10 without affording any opportunity in gross violation of principles of natural justice, standard orders, rules and regulations and Sec. 25-F R/W Sec. 25-B and Sec. 25-G of I.D. Act terminated the services of the petitioner. The termination is disproportionate to the allegation even though no domestic enquiry. The termination without any reasons while continuing his juniors in service is illegal and void. Consequently the termination of the petitioner being temporary employee of the Respondent is void, illegal and unjustified. Accordingly this point is answered.

38. Point No. 2

2. If not, to what reflief the workman concerned is entitled to?"

In the facts and circumstances discussed above and findings therein, I find that the petitioner is a temporary employee who put in 1041 days of continuous service within a period of 01.05.1985 to 26.03.1988 under Ex. W5. The Respondent failed to prove any negligence in discharging legitimate duties. The Respondent without following the principles of natural justice and conducting any domestic enquiry simply on open enquiry under Ex. M10 without affording any opportunity in gross violation of principles of natural justice, standard orders, rules and regulations and Sec. 25-F R/W Sec. 25-B and Sec. 25-G of I.D. Act terminated the services of the petitioner. The termination is disproportionate to the allegation even though no domestic enquiry. The termination without any reasons while continuing his juniors in service is illegal and void. Consequently the termination of the petitioner being temporary employee of the Respondent is void, illegal and unjustified. The reinstatement of the petitioner with back wages will meet the ends of justice.

39. There is no evidence that the petitioner was gainfully employed during the period preceding the reference. In the absence of any such evidence having considered that the petitioner is a worker. The petitioner was already reinstated on 26.02.2001 as per the interim orders in W.P.M.P. No. 879/2001 in W.P. No. 760/2001 dated 23.01.2001 and he is continuing in service. Even though the main W.P. No. 760/2001 was disposed off on 28.02.2012.

40. Accordingly an Award is passed without costs, directing the Respondent Management to continue the petitioner in service with all attendant benefits and also pay 50% of back wages for the period, which he was out of service within a period of two months from the date of publication of the Award.

Typed to my dictation directly to the Steno typist on the computer, corrected and pronounced in the open court on this the 24th day of October, 2013.

N. BALAYOGI, Chairman

APPENDIX OF EVIDENCE

Witnesses examined for the Petitioner	**Witnesses examined for the Respondent**
WW1: M.V. Krishna Rao	MW1: NVVSSS Nageswara Rao
PW2: Nageshwar Rao	MW2: S. Satyanarayana

Documents Marked for the Petitioner

Ex. W1	True copy of Selection Order dt. 29.06.83
Ex. W2	Letter dt. September, 86 increasing the wages of Casual Mazdoor
Ex. W3	Working days particulars book of WW1
Ex. W4	Personal record of WW1 on N.M.R.
Ex. W5	Working days sheet for the period from 01.04-85 to 25.03.88.
Ex. W6	Memo dt. 26.05.88 issued to WW1

Ex. W7 True copy of the letter dt. 09.06.88 regarding discontinuation of Service of WW1

Ex. W8 Certified copy of the FIR in Cr. No. 63/88

Ex. W9 Case Diary

Ex. W10 Order in R.C. No. 50/88 on the file of II Addl. MM, Kovvur dt. 05.10.88

Ex. W11 Order dt. 2.08.89 of CAT in O.A. No. 537/88

Ex. W12 Appointment letter dt. 15.09.89 given to WW1

Ex. W13 Seniority list of Mazdoors as on 31.3.87

Ex. W14 Letter dt. 15.09.89 issued to WW1 asking for explanation

Ex. W15 Explanation submitted by WW1 dt. 31.10.89

Ex. W16 Order of CAT dt. 04.01.91 in O.A. No. 1007/90

Ex. W17 Complaint made to the RLC, Hyderabad

Ex. W18 S.D.O.T.'s ltter dt. 28.09.94 addressed to the conciliation Officer.

Ex. W19 Minutes of discussion dt. 23.09.94

Ex. W20 Minutes of conciliation proceedings dt. 06.10.94

Ex. W21 Failure report dt. 31.10.94

Ex. W22 Proforma of Mazdoor identity/Services/Card

Ex. W23 Certificate dt. 22.08.81 issued to WW1.

Ex. W24 Judgement copy in O>A. No. 1137/98 dt. 04.08.99

Documents marked for the Respondent

Ex. M1 Stores Register

Ex. M2 Relevant entry at Page 45 of Ex, M1

Ex. M3 Complaint dt. 09.05.88 given by WW1 to the Jr. Engineer

Ex. M4 Letter calling for explanation of WW1

Ex. M5 Explanation of WW1

Ex. M6 Open Enquiry proceedings conducted

Ex. M7 Order of JTO not to engage WW1

Ex. M8 Final report of Police

Ex. M9 Joining Report of WW1

Ex. M10 Open enquiry report dt. 15.09.89

Ex. M11 Show cause notice calling for explanation

Ex. M12 Postal acknowledgement for Ex. M11

Ex. M13 Letter extending the time to submit explanation

Ex. M14 Postal Act. fo Ex. M13

Ex. M15 Letter dt. 30.09.89 of petitioner

Ex. M16 Letter extending the time

Ex. M17 Explanation dt. 31.10.89 submitted by WW1

Ex. M18 Payment sheet made to the petitioner

Ex. M19 Attested copy of Termination 31.10.89

Ex. M20 Proceedings dt. 6-1094 before ALO (Central) Hyderabad.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल कॉम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **हैदराबाद** के पंचाट (संदर्भ संख्या 38/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2014 को प्राप्त हुआ था।

[सं॰ एल-40012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 38/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERBAD

Present : Smt. M. Vijay Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 38/2006

Between:

Smt. B. Anasuya,
W/o B. Narasaiah,
R/o H. No. 5-24/26,
Rajiv Gandhi Nagar, Uppal Mandal,
Ranga Reddy District ...Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderbad-500 062 ...Respondent

Appearances:

For the Petitioner: M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2 A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendent benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit *w.e.f* 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping. dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10(1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the siad act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statuory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Pettioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.* within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.* contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Pettioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the precedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provision of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Pettioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the services matters as held by the Hon'ble Supreme Cort of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri. P. Narasimha, the contractor, Respondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an Area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into laks of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is keeping met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petititoners were in service as on that date. Ultimately by virture of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitoner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R&A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scale as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e. LC No. 38/2006 along with other LC Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., L.C. 28/2006. Accordingly in respect of all these case i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WW1 in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these

cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. **The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between that Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. **Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar Vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisation Central Government undertakings, are to be decided by this forum only as per the power conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related isputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. **Point No. 2:**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. **Point No. 3:**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicate for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and other have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent. Whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceedings and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstanaces, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

12. **Point No. 4:**

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving slary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care by the CAPRA municipality, whereas requirement of plant of the Respondent is being met throught helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e. a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petiioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Water front Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri. P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers

and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, palce and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. **Point No. 5**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner soughts for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal procedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decide and it has been decided while deciding point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.1.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is not dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:-

"25-F: Conditions precedent to retrenchment of workmen: No workman employed in any industry who has been continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing incicating the reasons for retrenchment and the period of notice of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26, As cab be gathered from the facts on record, Petitioner worked for one year continuously even a per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respodent since year together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in liew of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to held as null and void, illegal and inoperative, as per the well established legal perinciples laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considerered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained uner Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandataory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29 Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW I: Smt. B. Anasuya	MW 1: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex. W1: Photostate copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostate copy of representation dt. 11.4.98

Ex. W3: Photostate copy of order in SLA (Civil) Np. 13451/2001

Ex. W4: Photostate copy of representation dt. 3.5.96

Ex. W5: Photostate copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostate copy of representation dt. 9.10.98

Ex. W7: Photostate copy of order in WA No. 1602/1999

Ex. W8: Photostate copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1: Photostate copy of order in WP No. 5592/1991

Ex. M2: Photostate copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostate copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostate copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostate copy of order in contempt case No. 1903/98

Ex. M6: Photostate copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M7: Photostate copy of order in WA No. 1602/1999

Ex. M8: Photostate copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्युक्लेयर फ्यूल कॉम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 3/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आई आर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No 3/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C.No. 3/2006

Between:

Smt. D. Devamma,
W/o Kamanna,
C/o R. Ramulu,
H. No. 6-158/54/1, Durga Nagar,
Nacharam, Ranga Reddy District,
Hyderabad - 62. ...Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad - 500 062. ...Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec. 2A (2) of Industrial Dispute Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec. 10(1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning seeeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the apropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11,19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuosuly

without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of timei.e., contractor. Respondent used to maintain details of casul labourers, who were entrusted with works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others *vide* order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Repondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads *vide* letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time Petitioner filed WP No, 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the

Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, *i.e.,* L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases *i.e.,* LC 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as *res judi cata*?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief? Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the

present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently *i.e.,* in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

12. Point No. 4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.*, a contractor, it is for the Respondent to establish before the court that there has been such contractor and The said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e.*, the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the

workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed cither on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract Is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others {(2001) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in Furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent foiled to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other

wise is to be decided and it has been decided white deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organisation which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act. 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:—

"25-F: Conditions precedent to retrenchment of workmen:— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Scc.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory prerequisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of his services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesscs examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. D. Devamma	MWl: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex. W1: Photostat copy of Order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostat copy of representation dt. 11.4.98

Ex. W3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex. W4: Photostat copy of representation dt. 3.5.96

Ex. W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostat copy of representation dt. 9.10.98

Ex. W7: Photostat copy of order in WA No. 1602/1999

Ex. W8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M1: Photostat copy of order in WP No. 5592/1991

Ex. M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostat copy of order in contempt case No. 1903/98

Ex. M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M7: Photostat copy of order in WA No. 1602/1999

Ex. M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 397.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्पलेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 4/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 4/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workmen, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR (DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 4/2006

Between:
Smt. M. Teja,
W/o Chandraiah,
R/o H.No. 10-1/611,
Ashok Nagar, Near N.F.C.,
ECIL Post, Ranga Reddy District, ...Petitioner
Hyderabad

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad-500 062. .....Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition field invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be

the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit from 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 292l0 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2000. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with 3 liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P., and without following the procedure contemplated under Industrial Disputes Act. 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and

egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and strom water drains in housing colony. Here engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed *vide* order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunbal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, i.e., L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases i.e., L.C. 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?

5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?

6. To what relief Petitioner is entitled?

7. Point No.1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But. Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar Vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have her legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No.2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P, decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judicata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P, the Petitioner has invoked extraordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'bfe Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal(Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of tlie Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as *res judi cata* for the present proceedings. This point is answered accordingly.

12. Point No.4:

Admittedly. Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and

Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others[(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce

that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondenl failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therfore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25F reads as follows:-

"25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petition is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. M. Teja	MW1: Smt A. Rama Devi

Documents marked for the Petitioner

Ex.Wl:	Photostat copy of order in WPNo.29210/1998 dt. 25.9.2000
Ex.W2:	Photostat copy of representation dt.11.4.98
Ex.W3:	Photostat copy of order in SLA (Civil) Np. 13451/ 2001
Ex.W4:	Photostat copy of representation dt.3.5.96
Ex.W5:	Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98
Ex W6:	Photostat copy of representation dt.9.10.98
Ex,W7:	Photostat copy of order in W A No. 1602/1999
Ex.W8:	Photostat copy of representation dt.24.10.2005

Documents marked for the Respondent

Ex,Ml:	Photostat copy of order in WP No. 5592/1991
Ex.M2:	Photostat copy of receipt from Kapra Municipality dt l3.11.98
Ex.M3:	Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
Ex.M4:	Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor
Ex.M5:	Photostat copy of order in contempt case No.1903/98
Ex.M6:	Photostat copy of order in WP No. 29210/1998 dt.25.9.2000
Ex.M7:	Photostat copy of order in WA No.1602/1999
Ex.M8:	Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल कॉम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 5/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No 5/2006)

of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 5/2006

Between:

Smt. L. Pushpa,
W/o Devaiah,
R.o H.No.3-5-24/R 105,
Rajeev Gandhi Nagar, A.P.H.B. Colony,
Moula-Ali, Hyderabad-40. ....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad -500 062. ....Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Narersh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the peiition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit *w.e.f.* 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them.The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition. Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of theHon'ble High Court of A.P. The said appeal was allowed on 23.2.2001 Against the said order Petitioner filed Special Leave to Appeal (Civil) No 13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.*, within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and

maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of causal labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment fetter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'blc High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha. the contractor, Respondent No.2 in WP No. 292l0/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jangle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP No. 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impungned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made

in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, i.e., L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases i.e., LC 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar Vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said Act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of

Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extraordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ apeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as re judi cata for the present proceedings.

This point is answered accordingly.

12. Point No. 4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admitedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for clearning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principal that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principal laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract

entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross-examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge with 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master ans servant relationship between them.

This point is answered accordingly.

21. Point No. 5

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them and the Petitioner. Thus, it can sefely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25F reads as follows:—

"25-F: Conditions precedent to retrenchement of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette]."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in coninuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchement and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchement compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchement of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supere Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6:

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending. it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

30. Result:

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the service of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. L. Pushpa	MW 1: Smt. A. Rama Devi

Documents marked for the Petitioner

Ex. W 1: Photostat copy of order in WPNo. 29210/1998 dt. 25.9.2000

Ex. W 2: Photostat copy of representation dt. 11.4.98

Ex. W 3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex. W 4: Photostat copy of representation dt. 3.5.96

Ex. W 5: Photostat copy of provisional receipt from Kapara Municipality dt. 13.11.98

Ex. W 6: Photostat copy of representation dt. 9.10.98

Ex. W 7: Photostat copy of order in WA No. 1602/1999

Ex. W 8: Photostat copy of representation dt. 24.10.2005

Documents marked for the Respondent

Ex. M 1: Photostat copy of order in WP No. 5592/1991

Ex. M 2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M 3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M 4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M 5: Photostat copy of order in contempt case No. 1903/98

Ex. M 6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M 7: Photostat copy of order in WA No. 1602/1999

Ex. M 8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 399.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 6/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13/01/2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 6/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13/01/2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of August, 2013

INDUSTRIAL DISPUTE L.C. No. 6/2006

Between:

Sri. K. Narayana,
S/o Yellaiah,
C/o B. Lakshmi,
H.No.6-24/1, Subash Nagar,
Mallapur Railway Bridge, N.F.C., Nacharam(P),
Uppal(M), Ranga Reddy District. ....Petitioner

AND

Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad - 500 062. ....Respondent

APPEARANCES:

For the Petitioner : M/s G. Ravi Mohan, G. Naresh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

AWARD

This is a petition filed invoking Sec.2A(2) of Indusutrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit *w.e.f.* 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract

Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10(1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning, sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similalry placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the licence under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Govenment. Initially Petitioner was paid Rs. 25/- per day. Subsequently it was enhancned to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No.1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No. 13451/ 2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, *i.e.,* within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondent only. An officer from the civil depaprtment used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time *i.e.,* contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engaged any contract labour. Admittedly. Petitioner is an uneducated man and he has been exploited by the Respondent by paying less than minimum wages and terminating his services abruptly without any notice consequent to his filing WP before the Hon'ble High Court of A.P., and without following the procedure contemplated under Industrial Disputes Act, 1947 as welll as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of his family and consequent to illegal termination of her services it has become difficult to eak out livelihood of his family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others *vide* order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by the Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vest with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works

such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. His engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of his services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years. Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by him was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to him by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R&A) Act, 1970. Petitioner's employer was not having any contractual obligation with him as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and he was never exploited. Petitioner rendered service as a contract labourer with a contractor. He cannot claim for regularization of his services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judicata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, *i.e.,* L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases *i.e.,* LC 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judicata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

7. Point No. 1:

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal cannot entertain this case for the reason, that as held in the case of Sri Chandra Kumar *vs.* Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention cannot be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide

the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government Organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes petaining to the officers and employees of all the Central Government Offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No. 1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filling of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently *i.e.,* in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the Parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 23.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex. W3 the order rendered in Special Leave to Appeal(Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of his services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendent benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as res judicata for the present proceedings.

This point is answered accordingly.

12. Point No. 4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that he has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE Housing Colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said pupose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing Colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and he was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When one Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediatory between them *i.e.,* a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to him by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer *i.e.,* the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "*the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer".* This is the legal principal laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and Ors. *Vs.* National Union Waterfront Workers and Others {(2001) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that he is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually, Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can sefely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

21. Point No. 5:

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediatory between them the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25F reas as follows:

"25-F: Conditions precedent to retrenchment of workmen:-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette)."

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that he has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative. as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma *Vs.* Public Health Division [(2010)] 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947.

Therefore, the impugned termination order is bad and is liable to set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

29. Point No. 6

In view of the findings given in Point No. 5 above, the impugned oral termination order date 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending it can safely be held that Petitioner is entitled for all back wages and all other attendant benefits.

This point is answered accordingly.

30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of his services till the date of Petitioner's reinstatement into service. Petitioner is entitled for all order consequential benefits as well.

Award passed according. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Narayana	MW1: Smt. A Rama Devi

Doucments marked for the Petitioner

Ex. W1: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. W2: Photostat copy of representation dt. 11.4.98

Ex. W3: Photostat copy of order in SLA (Civil) Np. 13451/ 2001

Ex. W4: Photostat copy of representation dt. 3.5.96

Ex. W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98

Ex. W6: Photostat copy of represetation dt. 9.10.98

Ex. W7: Photostat copy of order in W.A. No. 1602/1999

Ex. W8: Photostat copy of representation dt. 28.9.2005

Documents marked for the Respondent

Ex. M1: Photostat copy of order in WP No. 5592/1991

Ex. M2: Photostat copy of receipt from Kapra Municipality dt. 13.11.98

Ex. M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

Ex. M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor

Ex. M5: Photostat copy of order in contempt case No. 1903/98

Ex. M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000

Ex. M7: Photostat copy of order in WA No. 1602/1999

Ex. M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनियन बैंक आफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ठ औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (1280/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.01.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/26/2006-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1280/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 17/01/2014.

[No. L-12012/26/2006-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No. 1280/2006

Registered on 9.8.2006

Sh. Ramesh Kumar, S/o Sh. Isher Dass, R/o Village Sohal, Tehsil and district Gurdaspur. ....Petitioner

Versus

The Chief Manager-cum-Disciplinary Authority Union Bank of India Veer Pratap Garh, Shastri Market Jalandhar.

....Respondent

APPEARANCES :

For the workman — Ex parte.

For the Management — Ex parte.

AWARD

Passed on 6.12.2013

Central Government vide Notification No. L-12012/26/2006 IR(B-II) Dated 20.7.2006, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Union Bank of India in imposing the punishment of dismissal from service of Sh. Ramesh Kumar w.e.f. 15.6.2005 is legal and justified? If so to what relief the concerned workman is entitled to and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he worked as Peon with the management bank from 1984 to 15.6.2002. He was convicted under Section 306/498A of IPC vide judgment dated 9..12.2003 and he preferred an appeal and the Hon'ble High Court passed the following order—

> "The appellant has undergone sentence of one year, six months and twenty three days inclusive of undertrial period out of total sentence of five years under Section 406 IPC.
>
> Appeal is not likely to be heard soon. Sentence suspended. Bail to the satisfaction of Chief Judicial Magistrate, Gurdaspur."

After the suspension of his sentence, he approached the management for joining the duty and the Regional Office issued a memo dated 28.5.2005. He submitted a written reply and and on 15.6.2005 he was dismissed from service. It is pleaded that at the time of passing of the dismissal order the disciplinary authority did not follow any procedure and he was not given any opportunity of personal hearing and as such his termination is illegal. Therefore he is entitled to be reinstated in service with all the consequential benefits.

The management filed written reply pleading that as per terms of para 3(b) of the Bipartite Settlement dated 10.4.2002, workman who was convicted by the Court was liable to be dismissed from service and accordingly the impugned order was passed, after serving a show cause notice dated 28.5.2005. He was also given an opportunity of personal hearing. That the impugned order is legal and valid. That the Hon'ble High Court only suspended the sentence of the workman and not the conviction of the workman and therefore it was not possible to retain him in service.

In support of his case, the workman appeared in the witness box and filed his affidavit supporting the version as given in the claim petition.

On the other hand the management examined S.K. Kapoor who filed his affidavit reiterating the case as set out in the written reply.

It may be added that initially the parties appeared through counsels; though, thereafter, sometimes either the workman or the management did not appear. However, both the workman and the representative of the management stopped appearing in the Court from 29.11.2012. Consequently, notice was issued to them through registered cover for today who did not appear and both the parties were proceeded ex parte vide separate order to today.

I have perused the file carefully.

It is the case of the workman himself that he was convicted sentenced by the learned Additional Sessions Judge under Section 306/498A IPC by the Additional Sessions Judge, Gurdaspur vide judgement dated 9.12.2003. It is again admitted case of the workman that a show cause notice dated 28.5.2005 was issued to him prior to the termination of services. It is the case of the management that an opportunity of personal hearing was also given to the workman. In view of para 3(b) of the Bipartite Settlement dated 10.4.2002 an employee is liable to be dismissed if convicted by the Court. In view of this Clause, his services were terminated and the same cannot be termed as illegal and void. The Hon'ble High Court only suspended the sentence and not the conviction of the workman vide order dated 28.4.2005 and therefore workman cannot take benefit of the said order to claim reinstatement in service.

Thus it cannot be said that the punishment awarded to the workman is illegal and unjustified and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का॰आ॰ 401.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मर्मागोवा पतन न्यास के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (29/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.01.2014 को प्राप्त हुआ था।

[सं. एल-36011/8/2011-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 29/2012) of the Cent. Govt. Indus.Tribunal-cum-Labour Court- No 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust and their workmen, received by the Central Government on 17/01/2014.

[No. L-36011/8/2011-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/29 of 2012

Employers in relation to the Management of Mormugao Port Trust

THE CHAIRMAN
Mormugao Port Trust
Mormugao Harbour
Goa 403 803.

AND

Their Workmen.
The President
Mormugao Port & Railway Workers Union
Main Administrative Office Building
Mormugao Port Trust
Headland Sada
Goa 403 804.

Appearances:

For the Employer : Mr. M.B. Anchan, Advocate.

For the Workman : Mr. G. Vijaychandran, Advocate.

Camp: Goa dated the 28th October, 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/8/2011-IR (B-II), dated 24.05.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2

(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Mormugao Port Trust, Goa in proposing amendment in Recruitment Rules to the post of Welfare Officer is legal and justified? To what relief the workmen are entitled?"

(2) After receipt of the order of reference from Ministry, notices were issued to both the parties. In response to the notice, Union filed their statement of claim at Ex-3. Union prayed to stop/prohibit the management of MPT to carry out amendment in Recruitment Rules for the post of Welfare Officer. Management resisted the statement of claim of the union vide their written statement at Ex-5. According to them the category of Labour Inspector does not fall in the definition of the workman as per Section 2 (iii) (iv) of the I.D. Act and therefore the reference is not maintainable. They further contended that the union is misleading as the management has proposed amendment to Recruitment Rules to the post of Welfare officer, operated only in General Administrative Department and not in Cargo Handling Labour Division. There is no change in service conditions. Therefore they pray that the reference be rejected.

(3) By his application dated 04/09/2013 (filed by post) President of Mormugao Port & Railway Workers Union, stated that they do not want to pursue the matter any further and prayed to dispose of the reference as withdrawn. Advocate for the management filed their no objection vide Ex-14. In the circumstances, I think it proper to dispose of the reference as withdrawn. Thus the order :

ORDER

Reference stands dismissed as withdrawn.

Camp: Goa
Date: 28th October, 2013

K. B. KATAKE, Presiding Officer

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.